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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 8th October, 2024

CONT.CAS.(CRL) 5/2021

DALMIA FAMILY OFFICE TRUST & ANR.Petitioners

Through: Mr. Ajay Bhargava, Mr. Siddhant Kumar, Ms. Wamika Trehan, Ms. Radhika Khanna and Mr. Varun Chopra Advocates (M-8551965439).

versus

GETAMBER ANAND & ORS.Respondents

Through: Mr. Sandeep Sethi, Sr. Advocate with Mr. Krish Kalra, Mr. Kashish Bansal and Ms. Riya Kumar, Advocates and Mr. Getamber Anand, Respondent No.1 in person.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE AMIT SHARMA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

Factual Background:

2. The present contempt petition arises out of a common order dated 5th October, 2021 passed by the Id. Sole Arbitrator Hon'ble Mr. Justice Swatanter Kumar (Retd.), Supreme Court of India (hereinafter '*Id. Arbitrator*'), wherein the Id. Arbitrator took severe umbrage to the conduct of the Respondents herein during arbitral proceedings which were pending before the Id. Arbitrator. *Vide* the said order the Id. Arbitrator made a reference to this Court under Section 27(5) of the Arbitration and Conciliation Act, 1996 (hereinafter "*the Act*") for issuance of appropriate orders and directions, in accordance



with law, for initiating proceedings for perjury as also criminal contempt against Respondent No.1 - Mr. Getamber Anand, as also Respondent No.3 - Ms. Saloni Adarsh. The Id. Arbitrator also directed initiation of proceedings against one Mr. Vaibhav Luthra, Advocate, before the Bar Council of Delhi. The operative portion of the Id. Arbitrator's order read as under:-

“CONCLUSION:

ARBITRAL TRIBUNAL'S ORDER, DIRECTIONS AND REPRESENTATIONS:

For the reasons and findings afore recorded, the Arbitral Tribunal would pass the following orders, directions and make the representations stated herein below, for the kind consideration of the Hon'ble High Court of Delhi at New Delhi:

I. All the Applications filed by the Claimants dated 06.04.2021, 18.06.2021 and 25.06.2021 in Arbitration Case Nos. 1/2021, 2/2021, 3/2021 and 10/2021 & 11/2021 are hereby dismissed with costs. Costs of all the dates devoted to the hearings of these Applications shall form part of the costs in the proceedings and be the part of the final award that would be published by the Tribunal.

*II. For the malicious acts and deeds of the Claimants No. 1 & 2 and their accomplice Ms. Saloni Adarsh, they having brought disrepute to the institution of arbitration, severally and jointly having interfered with the administration of justice, having alleged statements/ averments, which to their personal knowledge were incorrect, as true, and having tampered with fabricated documents and produced them as evidence before the Tribunal, in conspiracy and collusion with each other, have committed offences punishable under Section 195 to 197 of the Indian Penal Code, 1861 read with Section 340 of the Code of Criminal Procedure, 1973. **These parties are also liable to be proceeded against under the provisions of the***



Contempt of Court Act, 1971 for committing criminal contempt, of and in the proceedings before the Arbitral Tribunal.

i. It needs to be specifically stated before the Hon'ble High Court that in the proceedings before the Arbitral Tribunal, Mr. Vaibhav Luthra, Advocate and Ms. Saloni Adarsh were neither party nor did they appear at any stage, before the Tribunal. It is as a result of the email notice dated 08.06.2021 which is the very foundation of the Application under Section 12 & 13 of the Act of 1996 filed by the Claimants, that the conduct of these two individuals, percompulsion had to be examined by the Tribunal, they being alleged authors and source of the said email notice dated 08.06.2021. Thus, even the observations made by the Tribunal in this order are subject to the orders of the Hon'ble High Court of Delhi at New Delhi. During the proceedings, neither of the parties applied for impleadment of these two persons nor prayed for issuance of notice to them for any purpose, whatsoever. No steps were taken by Mr. Vaibhav Luthra, Advocate and Ms. Saloni Adarsh to be impleaded as affected party or a party claiming through or in conflict with the ATS Group.

ii. As such, the Tribunal did not consider it appropriate/necessary to issue notice to these persons in light of the notification dated 14.03.2011 and the law afore-referred.

iii. **Thus, the Arbitral Tribunal makes the following representations in accordance with the provisions of Section 27(5) read with Section 19 of the Act of 1996 before the Hon'ble High Court for issuance of appropriate orders and directions, in accordance with law:**

a. Claimants No. 1 & 2 along with their accomplice Ms. Saloni Adarsh, Flat No. 1111 ATS Tourmaline, Gurgaon, be ordered and directed to be prosecuted for



committing the offence of perjury and other relevant offences under the Indian Penal Code, 1861 read with Code of Criminal Procedure, 1973 in accordance with law.

b. Proceedings under the provisions of the Contempt of Court Act, 1971 be initiated against Claimants No. 1 & 2 and their accomplice Ms. Saloni Adarsh, and they be punished for the offence of criminal contempt in the proceedings before the Arbitral Tribunal, in accordance with law, by the Hon'ble High Court.

III. Direct the Bar Council of Delhi to scrutinize and examine the professional conduct of Mr. Vaibhav Luthra, Advocate (Luthra & Associates, Advocates and Solicitors at E-881, First Floor, C. R. Park, New Delhi - 110048, Mb. No. 9999871116, 9634586683, Email: associatesandluthra@gmail.com, Website: www.luthraandassociates.com, and take appropriate action in accordance with law, if found guilty of professional misconduct.

IV. Subject to orders of the Hon'ble High Court, the Respondents are granted liberty to initiate such criminal and/ or civil proceedings, as permissible to them in accordance with law, against the afore-referred Claimants No. 1 & 2 and their accomplices, Mr. Vaibhav Luthra, Advocate and Ms. Saloni Adarsh.

3. The aforesaid reference order dated 5th October, 2021 was passed by the Id. Arbitrator in arbitration proceedings pending between the Petitioners i.e., Dalmia Family Office Trust and Dalmia Family Holdings LLP (hereinafter collectively "Dalmia Group"), and M/s Almond Infrabuild Private Limited, M/s Domus Greens Private Limited, M/s ATS Infrastructure Limited, M/s Anand Divine Developers Private Limited and M/s ATS Housing Private Limited (hereinafter collectively "ATS Group"), as also the



Respondent No.1 – Mr. Getamber Anand, who is stated to be the promoter/director of the ATS Group.

4. In brief, the allegation of the Petitioners/Dalmia Group, against Respondent No. 1 and ATS Group, as also its signatory Respondent No.2 - Mr. Shailendra Pandey, is that between 2013 and 2015 the Dalmia Group had entered into nine independent sets of transactions with different companies of the ATS Group. It is alleged that ATS Group failed to repay the investments made by Dalmia Group in terms of the respective agreements between the parties. Accordingly, on 18th October, 2019 it is stated that the parties entered into a Supplementary Agreement whereby it is alleged that ATS Group admitted to its liabilities and undertook to repay the same by 31st March, 2020.

5. Thereafter, the ATS Group and Respondent No. 1 filed eleven petitions under Section 11 of the Act seeking constitution of an arbitral tribunal for adjudicating the disputes that arose between the parties. *Vide* order dated 8th January, 2021 with the consent of the parties, the Ld. Single Judge appointed the Sole Arbitrator for adjudicating all disputes between the parties arising out the aforesaid transactions. According to the ATS Group, the dispute relating to the aforesaid transactions was settled and accordingly ATS Group sought declaratory relief before the Id. Arbitrator in respect of the said transactions. As a counter claimant, the Dalmia Group sought recovery of the said investments not repaid by ATS Group, along with interest.

6. The Id. Arbitrator had entered reference post the aforesaid order dated 8th January, 2021. The respective parties filed applications under Section 17 of the Act in which arguments were heard by the Id. Arbitrator on several dates between 17th February, 2021 and 5th April, 2021. Further arguments of the ATS Group and Respondent No. 1 on their respective applications were



pending, and at that stage in a hearing on 10th June, 2021 the ATS group relied upon an alleged legal notice 8th June, 2021 addressed by one Mr. Vaibhav Luthra, Advocate, to one of the ATS Group company, namely ATS Infrastructure Limited. The allegations in the said legal notice were that the said advocate was representing Respondent No. 3, a home buyer, whose flat was, being collusively dealt with by the Dalmia Group and M/s ATS Infrastructure Limited in the Arbitral proceedings. It was also alleged in the said legal notice that the proceedings before the said Id. Arbitrator could not have continued in view of a conflict of interest qua the Id. Arbitrator.

7. It is alleged that when the hearing in the Section 17 applications under the Act commenced on 10th June, 2021, despite the fact that by then the said legal notice had already been received by M/s ATS Infrastructure Limited via email, no mention of it was made in the first session of arbitral proceedings. However, in the post lunch session, the said legal notice was sought to be relied upon to seek recusal of the Id. Arbitrator from the proceedings. The Counsel appearing for the ATS Group Companies then refused to proceed with arguments in the respective Section 17 applications. It is further stated that the said legal notice was not placed on record on 10th June, 2021 and was thereafter placed on record by means of an application for additional documents.

8. In the meantime, on 14th June, 2021 the ATS Group and Respondent No. 1 filed applications under Sections 14(2) read with 12(5), 15 and 11(6) of the Act before the Ld. Single Judge of this Court being ***OMP (T) (Comm) Nos. 53/2021, 54/2021 and 55/2021***. The said applications were withdrawn on 18th June, 2021 with liberty to approach the Id. Arbitrator. Thereafter, the ATS Group and Respondent No. 1 filed applications under Sections 12 and



13 of the Act before the Id. Arbitrator and sought recusal of the Id. Arbitrator from the arbitration proceedings. These applications were dealt with by the Id. Arbitrator on 5th October, 2021 and by a detailed order the conclusions arrived at by the Arbitral Tribunal *qua* the various grounds for challenge are as under :-

a) *Allegation of collusion between the parties i.e., Dalima Group and ATS Group, as also with the Id. Arbitrator:*

It was urged by the Respondents that the allegations made in the legal notice dated 8th June, 2021 were deteriorating the public image and reputation of the ATS Group. In this regard, the Id. Arbitrator after examining the said legal notice came to the conclusion that the same appears to a pre-planned affair between the ATS Group and Luthra & Associates on whose letter head the notice was issued. It was also concluded by the Id. Arbitrator that the said notice lacked genuineness and that the Respondents had filed three different versions of the said notice. Ld. Arbitrator held that the said notice was a tactic by the Respondents to unduly delay and frustrate the arbitration proceedings on baseless and frivolous grounds. It was also noted by the Id. Arbitrator that *vide* order dated 21st July, 2021 both parties had recorded their submissions denying the allegation of collusion between them. Accordingly, the Id. Arbitrator rejected the said ground for challenge.

b) *Allegation that the “Law Firm” related with the Id. Arbitrator, or managed by his family members, has represented the Resp. No. 1 in the past, and continues to advise the ATS Group:*

It was alleged by the Respondents that the said allegation falls under



Entry 23 and 28 of the Fifth Schedule and Schedule 7 & 10 of Seventh Schedule to the Act. In this regard the Id. Arbitrator has held that said allegation is factually incorrect and that the Respondents have not provided any documentary proof to substantiate the said allegation. Further, it was held by the Arbitrator that despite the objection raised by Petitioners against the genuineness of the legal notice dated 8th June, 2021 the Respondents did not lead any documentary or oral evidence to support the same. The Id. Arbitrator categorically denied the said allegation, and as per the affidavit on behalf of the said Law Firm, the Id. Arbitrator is not involved in any capacity in the functioning of the said firm. Accordingly, the Id. Arbitrator rejected the said challenge.

- c) Orders passed by Id. Arbitrator are open to challenge by home buyers and financial institutions in light of the allegations made in legal notice dated 8th June, 2021 read with letter dated 4th May, 2021 issued by the Dalmia Group to lenders of ATS Group:

The Respondents alleged that a conjoint reading of the letter dated 4th May, 2021 and legal notice dated 8th June, 2021 would make the Id. Arbitrator ineligible. In this regard, the Id. Arbitrator held that the said challenge is vague, lacks clarity and definiteness, and would not fall within the scope of conflict of interest as stipulated under the Act. Further, the Id. Arbitrator has held that the ATS Group and Respondent No. 1 could have availed the legal recourse available to them under law, or even, raise the same in the arbitration proceedings if it was related to the disputes in question. Moreover, the said allegations do not even remotely affect the validity of the mandate of the Id. Arbitrator. Accordingly, the said challenge was also rejected.



d) Allegation of significant doubt about involvement of other lawyers/parties, not connected with the disputes in question, in the adjudicating process in the concerned arbitration proceedings:

The Id. Arbitrator, in this regard, has held that it is undisputed fact that each order in the concerned proceedings was dictated by the Id. Arbitrator before the parties. Further, with effect from 19th June, 2021 the proceedings were ordered to be recorded and the recordings would also attest to the aforesaid fact. It was also held by the Id. Arbitrator that although *vide* order dated 19th June, 2021 the Tribunal had granted liberty to the parties to examine the laptop of the Private Secretary of the Id. Arbitrator, the Respondents did not inspect the same to substantiate the allegation. Accordingly, the Id. Arbitrator concluded that the said allegation was false, vexatious, and raised with the malicious intent of derailing the arbitration proceedings.

e) Proceedings conducted in violation of principles of natural justice qua ATS Group and Respondent No.1:

In this regard the Id. Arbitrator has pointed out that a total of 16 hearings were conducted in the arbitration proceedings and that both parties have been heard at length on different dates. Further, it is pointed out that the Respondents had sought adjournment on nine different occasions and each time the same was granted by the Id. Arbitrator, despite the fact that the parties had not completed their pleadings within time. The Id. Arbitrator has held that all parties were given equal indulgence by the Id. Arbitrator and the same is evident from the record as well. Accordingly, the said allegation is entirely incorrect and thus rejected by the Id. Arbitrator.



f) Allegation that the ld. Arbitrator did not file declaration and make disclosures in terms of Section 12 and 13 of the Act:

The ld. Arbitrator has held this allegation to be completely baseless and factually incorrect. Ld. Arbitrator has referred to his declaration dated 13th January, 2021 made to the parties to the arbitration proceedings along with the notice issued on the same date, informing that all the cases would be taken up for hearing on 16th January, 2021. The said declaration is also part of the order sheet of the proceedings. The Dalmia Group has not disputed this fact. Further, the ld. Arbitrator has held that all the circumstances alleged by the Respondent No. 1 and the ATS Group in their respective applications under Section 12 and 13 of the Act were in their knowledge prior to the date of appointment of the ld. Arbitrator *i.e.*, 8th January, 2021. However, the ATS Group and Respondent No. 1 did not raise any objection to the appointment of the ld. Arbitrator prior to 8th June, 2021. The ld. Arbitrator concluded that the disclosures mandated under Section 12(1)(a) & (b) of the Act have been duly complied with by the ld. Arbitrator. Accordingly, the said challenge was also rejected.

g) Appointment of ld. Arbitrator is non-est and invalid in light of the aforesaid grounds read with legal notice dated 8th June, 2021:

The ld. Arbitrator, in this regard, concluded that since all the aforesaid challenges/allegations have been rejected/found to be false, and the authenticity of the legal notice dated 8th June, 2021 is also not proved, the appointment of the ld. Arbitrator cannot be question on the present ground. Accordingly, all the challenges to ld. Arbitrator's impartiality



and independence were rejected in above terms.

9. After having arrived at the above conclusions, the Id. Arbitrator dismissed all applications under Sections 12 and 13 under the Act, and invoked Section 27(5) of the Act for initiating criminal contempt against the Respondents. The matter was then listed before the predecessor Bench of this Court on 14th December, 2021, on which date notice was issued to the Respondents.

10. The Court has from time to time passed various directions including directions to the Respondents *vide* order dated 28th August, 2023 to apologize to the Id. Arbitrator pursuant to the submissions of the Respondents. The Respondent No. 1 tendered an apology before the Id. Arbitrator on 5th December, 2023 and has placed the affidavits tendering apology on record. However, the Id. Arbitrator, has not accepted the apology of the Respondent No.1- Mr. Geetamber Anand, but has accepted the apology on behalf of Mr. Shailendra Pandey and Ms. Saloni Adarash, Respondent No.2 and 3, respectively. The reasons for not accepting the apology of Respondent No.1 is set out in the opinion of the Id. Arbitrator which is dated 13th April, 2024. The extract from the said opinion is set out below:-

“26. In light of the above well settled principles of law, it would clearly emerge that the case under contempt jurisdiction would normally fall in two categories:

a. Where the unconditional and unqualified apology is tendered with remorse, regret and at the earliest opportunity available without justifying its conduct/offence.

b. Where the apology is tendered as a tool of opportunism. It is tendered as part of a strategy to overcome the situation and avoiding punitive consequences before the Hon'ble Court(s) and more so



when such apology is neither sincere nor a genuine expression of the party's remorse.

27. In the present case, the apology tendered by Mr. Getamber Anand falls in the second category of case. The Tribunal is of the considered view that the apology tendered by Mr. Getamber Anand is neither bonafide nor a sincere remorse of his unscrupulous and unfair conduct. On the contrary, it is apparent from the record that it is a part of his consistent strategy to somehow avoid the consequences of his conduct before the Hon'ble High Court of Delhi. Amongst others and at the costs of reputation, the following facts would clearly show that the opinion of the Tribunal in the present case, is in consonance with the stated principles of law and a compelling result for the misdeeds and acts of Mr. Getamber Anand:

i. After the order of the Tribunal dated 05.10.2021, no apology or regret was expressed by Mr. Getamber Anand.

ii. Despite the order of the Hon'ble High Court of Delhi dated 24.08.2023, for a period of nearly four months, no affidavit of apology was filed by him.

iii. The first affidavit filed by him persisted with the allegations thus, it would be no apology, regret or remorse, both as a matter of fact and in the eye of law.

iv. Again on 26.03.2024, after the lapse of nearly four months, again the affidavit was filed where the allegations and submission were withdrawn. Thus, the apology affidavit was filed most belatedly and not at the first opportunity available to him.

v. His conduct pre and post the order of the Tribunal dated 05.10.2021 and Hon'ble High Court of Delhi dated 24.08.2023, does not even remotely suggest that he had any remorse, regret or a sincere intent of apologizing for his unscrupulous conduct, irresponsible statements and allegations made against the Tribunal, which even brought the institution of arbitration to disrepute. As afore-recorded, vide order dated



24.08.2023 of the Tribunal, he was directed to file an affidavit which had a direct bearing on matters in issue before the Tribunal. That affidavit was not filed till 10.04.2024, despite seeking various adjournments and undertakings given by him to the Tribunal.

vi. He even had the audacity to cast doubt and suspicion on the orders of the Tribunal which were based on the recorded proceedings of the hearings. The challenge to the correctness of the proceedings was conveyed to the Tribunal vide mail dated 20.03.2024, which he admitted before the Tribunal in his statement on 10.04.2024. It will be appropriate to bring it to the notice of the Hon'ble High Court that the proceedings before the Arbitral Tribunal, are being video-recorded all through. This direction had to be issued by the Tribunal in view of the attitude adopted by the Claimant. The mail sent is completely contrary to the statements of the Claimant/its Counsel recorded in the proceedings from time to time. The transcript of the recorded statement has been provided to the Claimant/its Counsel on 09.04.2024.

vii. On few dates, despite the directions of the Tribunal for his appearance for recording of evidence etc., he did not appear and sometime even without a sufficient cause.

viii. He has left no stone unturned in delaying the proceedings before the Tribunal. For instance, one example thereof is that the evidence of Respondent No.1 dated 20.03.2024 in Case No. 7/2021, sent to him on the same date, was signed and returned on 11.04.2024 to the Tribunal. Another example of the same is that the Claimant filed an application for additional evidence first in one case, and thereafter on the same facts, grounds and claiming the same relief, filed other application in other case after months. Thus, causing intentional delay in the proceedings of the Tribunal.

ix. The allegations made in the applications U/S 1286 13of the Act of 1996, besides having been found untrue, false and result of a conspiracy led by him, are to say



the least, criminally intended and contemptuous, which now is fairly and completely evidenced by the statement of Mr. Shailendra Kumar and Ms. Saloni Adarsh, as informed to the Tribunal on 10.04.2024.

x. His conduct is reprehensive and unscrupulous. Thus, causing avoidable delay in the completion of the proceedings.”

11. The matter is now pending adjudication before this Court.

Arguments:

12. Mr. Siddhant Kumar, Id. Counsel appearing for the Petitioners, has taken the Court through the order dated 5th October, 2021 passed by the Id. Arbitrator to argue that the Respondents have not been fair in their conduct before the Arbitral Tribunal. Their entire intention was to ensure that the Id. Arbitrator either recuses or is removed from the proceedings by making baseless and untenable allegations. It is submitted that in fact, the proceedings before the Arbitral Tribunal have been dragged due to this conduct of the Respondents. He further submits that various issues relating to fee etc., were also raised by the Respondent No. 1 and ATS Group and finally, the said Id. Arbitrator's mandate has been terminated and the petition being ***O.M.P. (T) (COMM.) 79/2024*** is pending, where a substitute Arbitrator is being appointed by the Court.

13. Id. Counsel for the Petitioners relies upon Sections 17(2) and 27(5) of the Act to argue that the powers of the Arbitrator or a Tribunal are for all purposes the same as that of a Civil Court. It is submitted that Section 27(5) of the Act is very clear to the effect that even contempt proceedings can be initiated by the Arbitral Tribunal. Id. Counsel also places reliance on the decision of the Supreme Court in ***Alka Chandewar v. Shamshul Ishrar Khan, (2017) 16 SCC 119*** to argue that after the amendment in 2015 to



Section 17 of the Act and the insertion of section 17(2) by the Arbitration and Conciliation (Amendment) Act, 2015, the Arbitral Tribunal need not even apply to the High Court for contempt of its orders. The submission of the Petitioner's Counsel is that the Arbitrator's power is equal to that of a Civil Court and any scandalising of the Arbitral Tribunal is as good as scandalising the Court. Thus, it is argued that the proceedings for criminal contempt are completely made out against Respondents.

14. On the other hand, Mr. Sandeep Sethi, Id. Senior Counsel submits on behalf of the Respondent No.1 that the intention of the Respondents was not to merely seek recusal of the Id. Arbitrator. It was only in the light of the allegations made in the legal notice dated 8th June, 2021 where collusion was alleged between the Petitioners and the ATS Group, to be on the safer side the ATS Group and Respondent No. 1 sought recusal of the Id. Arbitrator.

15. He further submits that in any event, the Id. Arbitrator has already accepted the apology of Respondent Nos. 2 and 3. However, insofar as Respondent No. 1 is concerned, for the reasons stated in the opinion, Id. Arbitrator has not accepted the apology of Respondent No. 1. Mr. Sethi, Id. Sr. Counsel, submits that his client has still tendered unqualified apology in respect of his conduct before the Id. Arbitrator and even before this Court.

Analysis and Findings:

16. Heard Id. Counsels for the parties.

17. The first and foremost thing that strikes the Court is that the legal notice which was addressed to M/s ATS Infrastructure Limited on 8th June, 2021 ought not to have led to such a long winded proceedings resulting in a criminal contempt reference. The allegations in the said legal notice ought to have been dealt by ATS Group on its own. The fact that the said legal notice was relied



upon to seek recusal/termination of the mandate of the Id. Arbitrator was conduct which is indeed puzzling! The allegation was that the Id. Arbitrator was conflicted due to work which he or his family had done for the ATS Group. If this is accepted as correct, the request for recusal ought to have been from the opposite side i.e., from the Petitioners, not the Respondents. However, that was not so. ATS, who was allegedly responsible for the conflicting position, itself sought recusal – which therefore led the Id. Arbitrator to clearly doubt their intentions.

18. From the facts that emerge, in this reference, it is clear to the Court that the intention was to somehow or the other ensure that the Id. Arbitrator is no longer adjudicating the matter for reasons best known to Respondents themselves. In fact, the allegations primarily being one of collusion between ATS Group and the Id. Arbitrator, there was no occasion for ATS Group itself to seek recusal or termination of the Id. Arbitrator's mandate. It seems completely illogical to the Court that the Respondents moved such an application.

19. Further, a perusal of the order dated 5th October, 2021 and the opinion dated 13th April, 2024 rendered by the Id. Arbitrator would also show that the Id. Arbitrator has expressed enormous grievances against the conduct of Respondent No.1 personally. The Respondent No. 1 clearly appears to have offended the Id. Arbitrator.

20. In the present system of adjudication of disputes that is currently prevalent, there can be no doubt that the Tribunals and Id. Arbitrators are adjudicating disputes in place of Civil Courts. Making baseless and untenable allegations against the Id. Arbitrators cannot be permitted. Arbitrators, who are currently being appointed are either retired judges or even practising



lawyers. That by itself cannot lead to allegations of conflict by mere speculation, resulting in recusal, without actual conflict being there. Ld. Arbitrators are put in tenuous positions when such applications are moved and any reckless or baseless allegations thus require to be dealt with strictly. While the integrity of the arbitration ecosystem needs to be maintained, the same cannot also be made fragile by giving room to unsubstantiated or speculative allegations against arbitrators. Any such allegations would constitute interference in the arbitral process.

21. The Id. Arbitrator's exasperation and frustrations are clearly evident from the two orders dated 5th October, 2021 and the opinion dated 13th April, 2024. The conduct of the Respondents to say the least is reprehensible and the Id. Arbitral Tribunal, under such circumstances cannot be rendered powerless.

22. The decision of the Supreme Court in *Alka Chandewar (supra)* clearly records that the entire purpose for amending Section 17 of the Act was to make sure that orders passed by the Arbitral Tribunals are not toothless and can be enforced in accordance with law. The observations of the Supreme Court in the said judgment are set out below:-

*“6. If Section 27(5) is read literally, there is no difficulty in accepting the plea of the learned Senior Advocate for the appellant, because persons failing to attend in accordance with the court process fall under a separate category from “any other default”. **Further, the section is not confined to a person being guilty of contempt only when failing to attend in accordance with such process. The section specifically states that persons guilty of any contempt to the Arbitral Tribunal during the conduct of the arbitral proceedings is within its ken.** The aforesaid language is, in fact, in consonance with the chapter heading of Chapter V, “Conduct of arbitral proceedings”. Further, it is well settled that a*



*marginal note can be used as an internal aid to interpretation of statutes only in order to show what is the general drift of the section. It may also be resorted to when the plain meaning of the section is not clear. In the present case we must go by the plain meaning of sub-section (5). This being the case, we find it difficult to appreciate the reasoning of the High Court. Also, in consonance with the modern rule of interpretation of statutes, **the entire object of providing that a party may approach the Arbitral Tribunal instead of the Court for interim reliefs would be stultified if interim orders passed by such Tribunal are toothless. It is to give teeth to such orders that an express provision is made in Section 27(5) of the Act.***

*7. In fact, the Delhi High Court by the judgment dated 18-8-2009, reported in **Sri Krishan v. Anand [Sri Krishan v. Anand, 2009 SCC OnLine Del 2472 : (2009) 112 DRJ 657 : (2009) 3 Arb LR 447]**, has correctly construed Section 27(5) of the Act. Further, it must be remembered that this Court in **Ambalal Sarabhai Enterprises Ltd. v. Amrit Lal & Co. [Ambalal Sarabhai Enterprises Ltd. v. Amrit Lal & Co., (2001) 8 SCC 397]** has held that **parties to arbitration proceedings are put to an election as to whether to apply for interim relief before the Tribunal under Section 17 or before the Court under Section 9. Such election would be meaningless if interim orders passed by the Arbitral Tribunal were to be written in water, as all parties would then go only to the Court, which would render Section 17 a dead letter.***

8. Coming to Shri Rana Mukherjee's submission that sub-section (2) of Section 17 introduced by the 2015 Amendment Act now provides for the necessary remedy against infraction of interim orders by the Tribunal, suffice it to state that the Law Commission itself, in its 246th Report, found the need to go one step further than



what was provided in Section 27(5) as construed by the Delhi High Court [*Sri Krishan v. Anand*, 2009 SCC OnLine Del 2472 : (2009) 112 DRJ 657 : (2009) 3 Arb LR 447]. The Commission, in its Report, had this to say:

“Powers of Tribunal to order interim measures

46. Under Section 17, the Arbitral Tribunal has the power to order interim measures of protection, unless the parties have excluded such power by agreement. Section 17 is an important provision, which is crucial to the working of the arbitration system, since it ensures that even for the purposes of interim measures, the parties can approach the Arbitral Tribunal rather than await orders from a court. **The efficacy of Section 17 is however, seriously compromised given the lack of any suitable statutory mechanism for the enforcement of such interim orders of the Arbitral Tribunal.**

47. In *Sundaram Finance Ltd. v. NEPC India Ltd.* [*Sundaram Finance Ltd. v. NEPC India Ltd.*, (1999) 2 SCC 479], the Supreme Court observed that though Section 17 gives the Arbitral Tribunal the power to pass orders, the same cannot be enforced as orders of a court and it is for this reason only that Section 9 gives the court power to pass interim orders during the arbitration proceedings. Subsequently, in *Army Welfare Housing Organisation v. Sumangal Services (P) Ltd.* [*Army Welfare Housing Organisation v. Sumangal Services (P) Ltd.*, (2004) 9 SCC 619], the Court had held that under Section 17 of the Act no power is conferred on the Arbitral Tribunal to enforce its order nor does it provide for judicial enforcement thereof.

48. In the face of such categorical judicial



opinion, the Delhi High Court attempted to find a suitable legislative basis for enforcing the orders of the Arbitral Tribunal under Section 17 in Sri Krishan v. Anand[Sri Krishan v. Anand, 2009 SCC OnLine Del 2472 : (2009) 112 DRJ 657 : (2009) 3 Arb LR 447] [followed in Indiabulls Financial Services Ltd. v. Jubilee Plots & Housing (P) Ltd. [Indiabulls Financial Services Ltd. v. Jubilee Plots & Housing (P) Ltd., 2009 SCC OnLine Del 2458]]. The Delhi High Court held that any person failing to comply with the order of the Arbitral Tribunal under Section 17 would be deemed to be “making any other default” or “guilty of any contempt to the Arbitral Tribunal during the conduct of the proceedings” under Section 27(5) of Act. The remedy of the aggrieved party would then be to apply to the Arbitral Tribunal for making a representation to the court to mete out appropriate punishment. Once such a representation is received by the court from the Arbitral Tribunal, the court would be competent to deal with such party in default as if it is in contempt of an order of the court i.e. either under the provisions of the Contempt of Courts Act or under the provisions of Order 39 Rule 2-A of the Code of Civil Procedure, 1908.

49. The Commission believes that while it is important to provide teeth to the interim orders of the Arbitral Tribunal as well as to provide for their enforcement, the judgment of the Delhi High Court in Sri Krishan v. Anand [Sri Krishan v. Anand, 2009 SCC OnLine Del 2472 : (2009) 112 DRJ 657 : (2009) 3 Arb LR 447] is not a complete solution. The Commission has, therefore, recommended amendments to Section 17 of the Act which would give teeth to the orders



of the Arbitral Tribunal and the same would be statutorily enforceable in the same manner as the orders of a court. In this respect, the views of the Commission are consistent with (though do not go as far as) the 2006 amendments to Article 17 of the Uncitral Model Law.

9. Pursuant to this 246th Report, sub-section (2) to Section 17 was added by the 2015 Amendment Act, so that the cumbersome procedure of an Arbitral Tribunal having to apply every time to the High Court for contempt of its orders would no longer be necessary. Such orders would now be deemed to be orders of the court for all purposes and would be enforced under the Civil Procedure Code, 1908 in the same manner as if they were orders of the court. Thus, we do not find Shri Rana Mukherjee's submission to be of any substance in view of the fact that Section 17(2) was enacted for the purpose of providing a "complete solution" to the problem.

23. A perusal of the two provisions *i.e.*, Section 17(2) and Section 27(5) of the Act, would also show that Section 27(5) stipulates specifically that if any person is guilty of contempt of the Arbitral Tribunal, during the conduct of arbitral proceedings, the punishments would be as though the said offences had taken place in suits before the Civil Court. The relevant provisions are extracted below:

"17. Interim measures ordered by arbitral tribunal.—
(1) A party may, during the arbitral proceedings, apply to the arbitral tribunal—
(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 arbitral tribunal to be just and convenient, and the arbitral tribunal shall have the same power for making orders, as the court has for the purpose of, and in relation to, any proceedings before it.

(2) Subject to any orders passed in an appeal under section 37, **any order issued by the arbitral tribunal under this section shall be deemed to be an order of the Court for all purposes and shall be enforceable under the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were an order of the Court.**

27. Court assistance in taking evidence.—(1) The arbitral tribunal, or a party with the approval of the arbitral tribunal, may apply to the Court for assistance in taking evidence.

xxxx

(5) Persons failing to attend in accordance with such process, or making any other default, or refusing to give their evidence, **or guilty of any contempt to the arbitral tribunal during the conduct of arbitral proceedings, shall be subject to the like disadvantages, penalties and punishments by order of the Court on the representation of the arbitral tribunal as they would**



incur for the like offences in suits tried before the Court.”

24. In light of the above, if such allegations were made before the Arbitral Tribunal, as would have been made before a Judge hearing a civil suit, clearly a reference for criminal contempt could have been made. The Arbitral Tribunal is no different from a Civil Court in respect of dealing with contempt against itself. Thus, any misconduct before an Arbitral Tribunal or a Sole Arbitrator would be liable to be dealt with in accordance with law, if the same constitutes civil law contempt.

25. The Court, however, in the present case has considered the affidavits of apology which have been filed by Respondent No.1. The text of the said apology is set out below:-

“2. In terms of the liberty granted by the Hon'ble High Court of Delhi, I deeply regret and most humbly tender my unconditional and unqualified apology to this Ld. Tribunal for all the submissions made which were perceived to demean the majesty of this Ld. Tribunal and withdraw the same unconditionally.

3. I state with greatest humility that I have always had the deepest and highest regard for this Ld. Tribunal and that in view of the submissions made above, the deponent expresses remorse and once again tenders its unconditional apology and under the foregoing circumstances the deponent humbly begs to be pardoned for the same.

Whereas the Hon'ble High Court of Delhi vide order dated 24.08.2023 had granted me as well as Mr. Shailendra Kumar (employee of the Claimant Company) to approach this Ld. Tribunal with an affidavit expressing remorse and unconditional apology



for the alleged contempt. However, Mr. Shailendra Kumar resigned from the services of the Claimant Company on 03.10.2023 and is no longer an employee of the Claimant Company.”

26. Even today, the Contemnor/Respondent No.1 is present before the Court and tenders an unconditional and unqualified apology for his conduct before the Id. Arbitral Tribunal. Moreover, the proceedings before the Arbitral Tribunal have been substantially delayed due to the aforesaid conduct of the Respondents, which clearly appears to have been the purpose of the Respondent No.1 and the ATS Group.

Conclusion:

27. Accordingly, while accepting the apology of the Respondent No. 1 for the aforesaid acts and the remorse which has been expressed, it is directed that the Respondent No.1 shall pay, by way of demand draft, a sum of Rs.10,00,000/- to any charitable organisation which may be identified by the Id. Arbitrator.

28. For the said purpose, the worthy Registrar General shall contact the Id. Arbitrator and obtain the details of the charitable organisation. Respondent No. 1 shall then appear before the worthy Registrar General and hand across a demand draft for the sum of Rs.10,00,000/-.

29. In addition, for the costs incurred by the Petitioners in these proceedings, a sum of Rs.3,00,000/- shall be paid by the Respondent No. 1 to the Petitioners as costs within one week.

30. The Respondent No. 1 has been cautioned that in future such conduct shall not be repeated.

31. The present contempt reference is disposed of with all pending applications, if any, in above terms.



32. List before the worthy Registrar General on 18th November, 2024.

PRATHIBA M. SINGH
JUDGE

AMIT SHARMA
JUDGE

OCTOBER 08, 2024/MR/NK/MS/PR
(corrected & released on 14th October, 2024)