Bombay High Court Konkola Copper Mines (Plc vs Stewarts And Lloyds Of India ... on 9 July, 2013 Bench: Dr. D.Y. Chandrachud, S.C. Gupte VBC 1/18 appl199.13-9.7

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

APPEAL (L) NO.199 OF 2013
IN

ARBITRATION PETITION NO.160 OF 2013
WITH
NOTICE OF MOTION (L) NO.915 OF 2013

Konkola Copper Mines (PLC). ...Appellant.
Vs.
Stewarts and Lloyds of India Limited. ...Respondent.
....
APPEAL (L) NO.223 OF 2013

IN
REVIEW PETITION NO.22 OF 2013
ig IN
ARBITRATION PETITION NO.160 OF 2013

Stewarts and Lloyds of India Limited. ...Appellant.
Vs.
Konkola Copper Mines (PLC). ...Respondent.
....
Mr.Gaurav Joshi with Mr.Piyush Raheja, Mr.Nishit Dhruva, Mr.Prakash

Shinde i/b. Mr.Devanshu Desai for the Appellant in App (L) 199/13 and for Respondent in App(L) 223/13.

Mr.L.M.Acharya i/b. Kunal Bhanage for the Respondent in App (L) 199/13 and for the Appellant in App (L) 223/13.

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CORAM : DR.D.Y.CHANDRACHUD AND
S.C.GUPTE, JJ.

July 9, 2013. ORAL JUDGMENT (PER DR.D.Y.CHANDRACHUD, J.) : Admit. By consent of Counsel and at their request, taken up for hearing and final disposal. 2. A partial final award was rendered by an arbitral tribunal constituted by the International Chamber of Commerce. By the judgment which is impugned in appeal, the Learned Single Judge dismissed a petition VBC 2/18 appl199.13-9.7 filed by the Appellant, a Zambian Company, under Section 9 of the Arbitration and Conciliation Act, 1996 for an interim measure after the making of the arbitral award, but before it was enforced under Section 36. The Single Judge held that: (i) Part-I of the Act was intended to be excluded in its application by the parties; and (ii) Jurisdiction could not be conferred on the Court to entertain an application under Section 9, merely because "both parities agree that the venue/place of arbitration shall be at Mumbai for the sake of convenience". Both the parties have, as a matter of fact, filed appeals and are aggrieved by the determination of the Learned Single Judge that Part-I has no application. 3. For convenience of reference, the description of parties as it appears in Appeal (L) 199 of 2013, is adopted in this judgment. 4. The Appellant is a company incorporated under the laws of Zambia and is a copper mining company. Contracts were entered into between the Appellant and the Respondent on 10 and 18 August 2006 under which the Appellant agreed to buy and the Respondent agreed to supply and deliver rubber lined steel pipes for a plant of the Appellant in Zambia. Clause 24 of the General Conditions of Contract provided as follows: "Any party to this contract shall have the right to have recourse to and be bound by the pre-arbitral reference procedure of the International Chamber of Commerce in accordance with its Rules for a Pre-Arbitral Referee Procedure. Without prejudice to clauses 20 and 21 of this contract, all disputes arising out of or in connection with this contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules of Arbitration. VBC 3/18 appl199.13-9.7 The venue for the arbitration contemplated in this contract shall be the Indian Capital, New Delhi." The substantive law governing the contract was the law of Zambia. 5. Upon the invocation of arbitration, the

Appellant by a communication dated 10 May 2011 proposed Mumbai as the place of arbitration and that the Indian Arbitration and Conciliation Act, 1996 be applicable. In response, the Respondent conveyed its acceptance to Mumbai as the place of arbitration as proposed by the Appellant and to the applicability of the Arbitration and Conciliation Act, 1996. A sole arbitrator was appointed by the International Chamber of Commerce. The arbitral tribunal made a partial final award on 9 January 2013. By the award, the following sums were awarded to the Appellant: "I. Respondent shall pay the Claimant: a). US$3,212,850 and simple interest thereon at 1.5% (one and a half per cent) per annum from 1 August 2008 until full payment; b) US$5,437.50 and simple interest thereon at 1.5% (one and a half per cent) per annum from 21 March 2011 until full payment. II. Respondent shall pay the Claimant $US 137,915.49 being Claimant's reasonable legal costs and expenses of the First Phase; III. Respondent shall bear t$ 9.7 *security in the sum of US* 3,356,203 together with future interest; a disclosure on affidavit of the assets and properties owned by the Respondent and an order of restraint prohibiting the Respondent from selling or transferring its properties. The Learned Single Judge by a judgment dated 19 March 2013 dismissed the Petition under Section 9 on the ground that: (i) By the judgment of a Constitution Bench of the Supreme Court in Bharat Alluminium Company vs. Kaiser Alluminium Technical Services Inc.,1 (BALCO), the earlier decision in Bhatia International vs. Bulk Trading S.A. 2 had been overruled with prospective effect. Since the agreement between the parties was prior to the decision of the Constitution Bench and particularly, in view of the agreement between the parties, Part-I stood excluded; and (ii) The mere fact that the parties had agreed to the venue/place being at Mumbai would not confer jurisdiction on this Court to entertain a petition under Section 9. 7. On behalf of the Appellant three issues have been placed for determination in these proceedings in appeal: (i) Whether the place of arbitration was Mumbai according to the terms of the agreement between the parties; (ii) Whether the Courts situated in the place of arbitration have jurisdiction to entertain an application under Section 9 independent of the place where the cause of action accrues; and (iii) Whether the ruling of the Supreme Court in BALCO (supra) that courts of the place where the arbitration is to take place have jurisdiction 1 (2012) 9 SCC 552 2 (2002) 4 SCC 105 VBC 5/18 appl199.13-9.7 under Section 2(1)(e) is prospective and would apply only to arbitration agreements entered into after the date of the judgment or whether this aspect of the decision is declaratory of the law laid down by the Supreme Court. 8. For the sake of clarity, it would be necessary to note that submissions before this Court have proceeded on the basis that the petition under Section 9 was filed in this Court on the basis that the place of arbitration as agreed between the parties is Mumbai. On this basis, it has been urged the the Appellant that in an international commercial arbitration governed by Part-I, the place of arbitration has relevance to the jurisdiction of the Court to entertain an application under Section 9. In support of this submission, Learned Senior Counsel urged that: (i) Part-I of the Arbitration and Conciliation Act, 1996, is applicable since the place of arbitration is admittedly in India and having

regard to the clear provisions of Section 2(2); (ii) The Learned Single Judge was in error in proceeding on the basis that Part-I has no application since as a matter of fact, this was neither the submission of the Appellant, nor of the Respondent and the only issue which arose for determination was, whether a petition under Section 9 would lie in Mumbai or, as the Respondent contends, such a proceeding could be entertained only in Kolkatta where the cause of action has allegedly arisen; (iii) Parties by their agreement, as reflected in their communications dated 10 May 2011 and 24 May 2011, agreed that the place of arbitration would be Mumbai. This has been accepted in the partial final award of the sole arbitrator and at least at this stage, as long as the award has not been set aside by a procedure known to law, this finding must prima facie be accepted; (iv) In Bhatia International, VBC 6/18 appl199.13-9.7 a Bench of three Learned Judges of the Supreme Court had held that Part-I of the Act would apply even to a foreign seated commercial arbitration unless the parties had expressly or by necessary implication excluded its applicability. The judgment in Bhatia International was overruled with prospective effect by the Constitution Bench in BALCO and in consequence, the law declared by the Court is to apply prospectively to all arbitration agreements executed thereafter; (v) While the judgment in Bhatia International has been overruled with prospective effect, the decision of the Supreme Court independently considered various other aspects, including inter alia as to whether within the meaning of Section 2(1)(e), the Court of the place of arbitration would have jurisdiction of a supervisory nature that would comprehend proceedings under Section 9 of the Act. The decision on this aspect and the reasoning of the Supreme Court is declaratory and cannot be regarded as being prospective. Hence, this Court, being the Court within the meaning of Section 2(1)(e), has jurisdiction to entertain an application under Section 9, once it is held that parties by their agreement had accepted that the place of arbitration would be Mumbai. 9. On the other hand, it has been urged on behalf of the Respondent that the Appellant has a registered office in Zambia; the Respondent has a registered office at Kolkatta and the agreement was received and executed by the Respondent in Kolkatta. The final partial award has been challenged by the Respondent before the Calcutta High Court where a petition under Section 34 is pending, though the petition under Section 34 was filed after the institution of the proceedings before this Court under Section 9. Counsel VBC 7/18 appl199.13-9.7 urged that: (i) This Court has no jurisdiction to entertain a Petition under Section 9 because under Section 2(1)(e), only the Court of the place where the cause of action has arisen would have jurisdiction and the decision in BALCO is prospective; (ii) The issue pertaining to the exercise of jurisdiction by the Court of the place of arbitration was the issue in Bhatia International; (iii) In several decisions of the High Courts prior to the decision in BALCO, it had been held that the place of arbitration is wholly irrelevant for deciding the jurisdiction under Section 2(1)(e); and (iv) In the alternative if the judgment in BALCO is held to apply, the situs of the arbitration between the parties was New Delhi and Mumbai was only selected as a venue as a matter of geographical location only. 10. The rival submissions now fall for

consideration. 11. Section 2(1)(e) of the Arbitration and Conciliation Act, 1996, defines the expression"Court" as follows: "(e)"Court" means the principal civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject matter of the arbitration if the same had been the subject-matter of a suit, but does not include any civil Court of a grade inferior to such principal civil Court, or any Court of Small Causes." The expression "international commercial arbitration" is defined in Section 2(1)(f) thus: "(f)"international commercial arbitration" means an arbitration relating to disputes arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India and where at least one of the parties is - VBC 8/18 appl199.13-9.7 (i) an individual who is a national of, or habitually resident in, any country other than India; or (ii) a body corporate which is incorporated in any country other than India; or (iii) a company or an association or a body of individuals whose central management and control is exercised in any country other than India; or (iv) the Government of a foreign country" 12. Section 2(2) stipulates that Part-I of the Act shall apply "where the place of arbitration is in India". Admittedly - and on this aspect there is no dispute whatsoever - the place of arbitration under the contract between the parties is in India. The dispute between the parties arises on the issue as to whether the expression "court" for the purposes of Section 2(1)(e) is the Court which has jurisdiction over the place of arbitration or whether it is the place where the cause of action has arisen. According to the Appellant, the place of arbitration is Mumbai, whereas according to the Respondent, the place of arbitration is New Delhi. According to the Respondent, the Court for the purpose of Section 2(1)(e) would be in Calcutta, where according to it, the cause of action has arisen. Hence, in either view of the matter, it is evident that parties are ad idem that the place of arbitration is in India within the meaning of Section 2(2). Hence, necessarily Part-I would apply. The Learned Single Judge was thus clearly in error in proceeding on the basis that Part-I had no application in the present case. 13. The real issue is as to whether the Petition under Section 9 was VBC 9/18 appl199.13-9.7 maintainable before this Court. The first question which falls for determination is whether the place of arbitration under the agreement between the parties is Mumbai, because if it is not, then no further question would arise of the maintainability of the Petition, having regard to the fact that admittedly no part of the cause of action has arisen within the ordinary original civil jurisdiction of this Court. The original agreement between the parties stated in Clause 24 of the General Conditions of Contract that the venue for the arbitration shall be New Delhi. Now, it cannot be gainsaid that though the parties used the expression "venue" in Clause 24, the label assigned by them would not be dispositive. It is evident that in Clause 24 parties contemplated that the place of arbitration shall be New Delhi. However, on 10 May 2011, the Appellant addressed an email to the ICC with a copy to the Respondent and under the head "place of arbitration" proposed Mumbai as the place of arbitration. The Appellant also proposed that the Arbitration and Conciliation Act, 1996, should be applicable. The

Respondent by its communication dated 24 May 2011 accepted specifically that Mumbai would be the place of arbitration as proposed by the Appellant and that the Act of 1996 would also be applicable. In this background, the arbitral award states as follows: "The place of arbitration is Mumbai, India pursuant to the parties' agreement (by Claimants' letter dated 10 May 2011 and Respondents' letter dated 24 May 2011)." We find justification in the submission of the Appellant that in this case for the purpose of the proceedings under Section 9, these observations in the arbitral award cannot be discarded so long as the award continues to hold the field. VBC 10/18 appl199.13-9.7 There is a distinction in the law between the venue of arbitration and the place of arbitration. Sub-sections (1) and (2) of Section 20 deal with the place of arbitration, while sub-section (3) provides for the venue of arbitration. Section 20 provides as follows: "20. Place of arbitration. - (1) The parties are free to agree on the place of arbitration. -(2) Failing any agreement referred to in sub-section (1), the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties. -(3) Notwithstanding sub-section (1) or sub-section (2), the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of documents, goods or other property." Under sub-section (1), the place of arbitration is a matter in which parties are free to arrive at an agreement. In the absence of an agreement under sub- section (1), the arbitral tribunal is entrusted with the jurisdiction to decide the place of arbitration on the basis of the circumstances of the case, including parties' convenience. Sub-section (3) in contrast, begins with a non-obstante provision and provides that unless the parties have otherwise agreed, the arbitral tribunal may meet at any place for consultation among its members, for hearing witnesses, experts or the parties or for inspection of documents, goods or other property. The venue of an arbitration is something which the arbitral tribunal can decide from time to time. For instance, it may be convenient for the arbitral tribunal to meet at one or, for that matter, several venues during the course of arbitral proceedings having regard to the convenience of the witnesses or the parties themselves and having regard to VBC 11/18 appl199.13-9.7 the subject matter of the arbitral proceedings. But, the place of arbitration is that which is agreed upon between the parties under sub-section (1) and failing such an agreement that which is determined by the tribunal under sub- section (2) of Section 20. Parties may initially agree to a particular place as a seat of arbitration, but there is nothing in sub-section (1) of Section 20 which prevents them from agreeing subsequently to another place as the seat of arbitration. In the present case, though parties originally contemplated that the place of arbitration would be New Delhi, subsequently they agreed that the place of arbitration shall be Mumbai. In that view of the matter, the first issue before the Court would stand answered by holding that the place of arbitration agreed between the parties, having due regard to the provisions of Section 20(1), was Mumbai. 14. The next aspect which falls for determination is whether a court whose original civil jurisdiction extends over

the place of arbitration will have jurisdiction to entertain an application under Section 9 independent of the place of the accrual of the cause of action. The answer to this question would have to necessarily be based on the principles of law which were enunciated in the judgment of the Supreme Court in BALCO. The reference to the Constitution Bench in BALCO arose when the correctness of the judgment in Bhatia International was doubted. The earlier judgment in Bhatia International had held that Part-I of the Act of 1996 would apply to all arbitrations and to all proceedings relating thereto. Bhatia International laid down the principle that in cases of international commercial arbitrations held out of India, the provisions of Part-I would apply unless the parties by VBC 12/18 appl199.13-9.7 agreement, express or implied, exclude all or any of its provisions. In the subsequent judgment of the Constitution Bench in BALCO, the Supreme Court held that: (i) The Act of 1996 adopts the territorial principle; (ii) The seat of arbitration constitutes the centre of gravity of the arbitration though the venue of the arbitration may be at one or more convenient locations; (iii) Though Section 2(2) does not stipulate that Part-I shall apply only where the place of arbitration is in India yet, the absence of the word "only" does not change the content of Section 2(2) as limiting the application of Part-I to arbitration where the place/seat is in India; (iv) The choice of another country as the seat of arbitration inevitably imports an acceptance that the law of that country relating to the conduct and supervision will apply to the proceedings; (v) If the seat of arbitration is outside India, Part-I would not be applicable, nor would it enable Indian courts to exercise supervisory jurisdiction over the arbitration or the award. This necessarily follows from the fact that Part-I applies only to arbitrations having their seat/place in India; (vi) There is no existing provision in the C.P.C. or in the Act of 1996 for the Court to grant an interim measure under Section 9 in an arbitration which is to take place outside India even though the parties by agreement may have made the Act of 1996 as the governing law of arbitration. Having regard to these principles, the Supreme Court held that the judgment in Bhatia International and the subsequent judgment taking the same view in Venture Global Engineering vs. Satyam Computer Services Ltd.3 did not lay down the correct principle of law. Hence, Part-I of the Act of 1996 was held to be applicable only to all arbitrations which take place within the territory of India and in a foreign 3 (2008) 4 SCC 190 VBC 13/18 appl199.13-9.7 seated international commercial arbitration, no application for interim measure would be maintainable under Section 9 or any other provision. However, the Supreme Court held that since the judgment in Bhatia International had held the field since 13 March 2002 and had been followed by the High Courts and in Venture Global Engineering, in order to render complete justice, the law declared by the Court would apply prospectively to all arbitration agreements executed thereafter. 15. The Constitution Bench of the Supreme Court has held in Somaiya Organics (India) Ltd. vs. State of U.P,4 that the doctrine of prospective overruling is a recognition of the principle that the Court moulds the reliefs claimed to meet the justice of the case and this power has been expressly conferred by Article 142 of the Constitution on the Supreme Court.

5 Prospective overruling is a method evolved by the Court to adjust competing rights of parties so as to save transactions, statutory or otherwise, that were effected by the earlier law. 16. The consequence of the prospective declaration of law in BALCO is that the principle that Part-I of the Act of 1996 would be applicable only to arbitrations where the place of arbitration is in India would govern arbitration agreements which would be executed thereafter. The judgment in BALCO, however, considers various other aspects of law. While interpreting the provisions of Section 2(1)(e), the Supreme Court made a distinction between the expression "subject matter of the arbitration" and the expression "subject 4 (2001) 5 SCC 519 5 At paras 27 and 28 VBC 14/18 appl199.13-9.7 matter of the suit". The observations in para 96 of the judgment in BALCO are thus: "We are of the opinion, the term"subject matter of the arbitration" cannot be confused with "subject matter of the suit". The term "subject matter" in Section 2(1)(e) is confined to Part I. It has a reference and connection with the process of dispute resolution. Its purpose is to identify the courts having supervisory control over the arbitration proceedings. Hence, it refers to a court which would essentially be a court of the seat of the arbitration process. In our opinion, the provision in Section 2(1)(e) has to be construed keeping in view the provisions in Section 20 which give recognition to party autonomy. Accepting the narrow construction as projected by the learned counsel for the appellants would, in fact, render Section 20 nugatory. In our view, the legislature has intentionally given jurisdiction to two courts i.e. the court which would have jurisdiction where the cause of action is located and the courts where the arbitration takes place. This was necessary as on many occasions the agreement may provide for a seat of arbitration at a place which would be neutral to both the parties. Therefore, the courts where the arbitration takes place would be required to exercise supervisory control over the arbitral process. For example, if the arbitration is held in Delhi, where neither of the parties are from Delhi, (Delhi having been chosen as a neutral place as between a party from Mumbai and the other from Kolkata) and the tribunal sitting in Delhi passes an interim order under Section 17 of the Arbitration Act, 1996, the appeal against such an interim order under Section 37 must lie to the courts of Delhi being the courts having supervisory jurisdiction over the arbitration proceedings and the tribunal. This would be irrespective of the fact that the obligations to be performed under the contract were to be performed either at Mumbai or at Kolkata, and only arbitration is to take place in Delhi. In such circumstances, both the courts would have jurisdiction i.e. the court within whose jurisdiction the subject matter of the suit is situated and the courts within the jurisdiction of which the dispute resolution i.e. arbitration is located." (emphasis supplied) The Supreme Court held that the provisions of Section 2(1)(e) are purely jurisdictional in nature and can have no relevance to the question whether any part of the cause of action has taken place outside India. The observations which have been extracted above, clearly establish that the Court where the VBC 15/18 appl199.13-9.7 arbitration takes place would be required to exercise supervisory control over the arbitral process. The Supreme Court has held that Parliament

has given jurisdiction to two courts - the Court which would have jurisdiction where the cause of action is located and the Court where the arbitration takes place. This is evident from the example which is contained in the above quoted extract from the decision. 17. In our view, it would not be appropriate, while applying the ratio of the judgment in BALCO to hold that the reasons which are contained in the judgment would operate with prospective effect. What the Supreme Court has essentially ordered, while moulding the reliefs is that the declaration of law to the effect that Part-I shall apply only to those arbitrations where the place of arbitration in India shall take prospective effect after the date of the judgment. But equally, it would be impermissible to hold that the interpretation which has been placed by the Supreme Court on the provisions of Section 2(1)(e) would apply only prospectively. The judgment of the Supreme Court is declaratory of the position of law that the Court having jurisdiction over the place of arbitration can entertain a proceeding in the exercise of its supervisory jurisdiction as indeed the Court where the cause of action arises. The Supreme Court has also noted that the regulation of arbitration consists of four steps: (i) the commencement of arbitration; (ii) the conduct of arbitration; (iii) the challenge to the award; and (iv) the recognition or enforcement of the award. In the judgment of the Supreme Court, Section 9 has been held to be an ancillary provision that supports the arbitral process or one that is structurally ancillary. Once the provisions of Section 9 are VBC 16/18 appl199.13-9.7 regarded to be ancillary in nature, or in other words, a facilitative statutory instrument to support the arbitral process, it would be apparent that those provisions would apply where Part-I of the Act of 1996 is attracted. Consequently, where as in the present case, the place of an international commercial arbitration is in India, Part-I would apply and of which Section 9 is a necessary, if ancillary ingredient. Counsel appearing on behalf of the Respondent submitted that prior to the judgment of the Supreme Court, several High Courts had taken the view that the place of arbitration is irrelevant to the exercise of the jurisdiction under Section 2(1)(e). This, in our view, cannot make any difference to the outcome because once the Supreme Court has concluded what should be the correct interpretation of Section 2(1)(e), the binding principles laid down therein must necessarily apply. 18. The Learned Single Judge was in error on both the counts which weighed in the dismissal of the Petition under Section 9. Firstly, the Learned Single Judge held that the decision in BALCO has overruled Bhatia International with prospective effect; that the agreement between the parties was prior to the decision in BALCO and that the agreement between the parties intended to exclude the provisions of Part-I. With respect, this finding misses the essential point that once the place or seat of arbitration was agreed upon between the parties to be in India, Part-I would necessarily stand attracted. The judgment in Bhatia International was overruled in BALCO on the issue as to whether Part-I would be attracted to foreign seated commercial arbitrations. In the present case, on the facts as they are admitted, it is evident that the commercial arbitration was not a foreign seated arbitration. VBC 17/18 appl199.13-9.7 That the place of arbitration was to be in India is evident and to it Part-I,

therefore, was attracted. As a matter of fact, both the Appellant and the Respondent are aggrieved by the first determination made by the Learned Single Judge. Secondly, the Learned Single Judge erred in proceeding on the basis that Mumbai was a venue as distinguished from the place of arbitration. We have indicated earlier our reasons for holding that the place of arbitration was Mumbai. Hence this Court in the exercise of its ordinary original civil jurisdiction over the place of arbitration can entertain a petition under Section 9. Section 9 is a provision ancillary to its supervisory role. Hence, even as regards the second ground, the Learned Single Judge was in error in holding that the seat of arbitration that was initially agreed upon remained as the place of arbitration. The clear material demonstrates on the record that the subsequent agreement between the parties was not in relation to the venue of arbitration. By their exchange of emails on 10 May 2011 and 24 May 2011, parties clearly indicated that the place of arbitration shall be Mumbai. Once that be the position, this Court would have jurisdiction having regard to the fact that the place of arbitration was agreed upon as Mumbai. 19. The Learned Single Judge did not consider the merits of the application of the Appellant under Section 9, having come to the conclusion that the Petition was not maintainable. Since the Learned Single Judge has not considered the merits, we are of the view that it would be appropriate and proper while allowing the appeal and setting aside the impugned judgment and order to request the Learned Single Judge to reconsider the merits of the application under Section 9. At the same time, it is an admitted position that VBC 18/18 appl199.13-9.7 a partial final award has been passed by the arbitral tribunal in favour of the Appellant and as against the Respondent. In the circumstances, we are of the view that it would be appropriate for this Court to pass a limited ad-interim order while disposing of the appeal which shall hold the field until the Petition under Section 9 is disposed of. We accordingly issue an ad-interim direction in terms of prayer clause (e) of the Petition, restraining the Respondent from in any manner selling, transferring, alienating or encumbering its right, title or interest in respect of its properties otherwise than in the due course of business. We would request the Learned Single Judge to expedite the disposal of the application under Section 9 on merits. 20. For the aforesaid reasons, we allow the appeal by setting aside the impugned judgment and order of the Learned Single Judge dated 19 March 2013 and restore the Arbitration Petition for disposal on merits. 21. No further directions are necessary in Appeal (L) 223 of 2013, in view of the order which has been passed in Appeal (L) 199 of 2013. Both the appeals are accordingly disposed of. There shall be no order as to costs. 22. In view of the disposal of the appeals, the Notice of Motion in Appeal (L) No.199 of 2013 does not survive and is accordingly disposed of. (Dr.D.Y.Chandrachud, J.) (S.C.Gupte, J.)