

## **AN ARBITRAL TRIBUNAL IS NOT EMPOWERED TO PASS AN EX PARTE AD INTERIM ORDER**

### **INTRODUCTION:**

The Bombay High Court in its recent decision in **Godrej Properties Ltd. vs. Goldbricks Infrastructure Pvt. Ltd.**<sup>1</sup> observed that it was unknown to law for an arbitral tribunal to pass an ex parte ad interim order, on a mere filing of an application under section 17 of the Arbitration and Conciliation Act, 1996, without even hearing the concerned parties to the arbitration.

### **FACTS:**

Vide an order dated 22<sup>nd</sup> January, 2021, passed by the Bombay High Court, by consent of the parties, a sole arbitrator was appointed to adjudicate upon the disputes between the parties. On 7<sup>th</sup> October, 2021, the Petitioner received an email from the Respondent, forwarding a copy of an email addressed by the Respondent to the sole arbitrator, enclosing an application filed by the Respondent under section 17 ("said Application") of the Arbitration and Conciliation Act, 1996 ("the Act").

Without hearing the Petitioner or the Respondent, the sole arbitrator, *suo moto* considered the said Application filed by the Respondent and granted certain ad interim reliefs as prayed for in the said Application and passed an *ex parte* order dated 8<sup>th</sup> October, 2021.

Being aggrieved by the *ex parte ad interim* order passed by the sole arbitrator, the Petitioner preferred an appeal under section 37 of the Act before the Bombay High Court.

### **ISSUE FOR CONSIDERATION:**

The main issue for consideration before the Bombay High Court was:

Whether it was appropriate for the sole arbitrator to pass an *ex parte ad interim* order in an application filed under section 17 of the Act?

### **SUBMISSIONS ON BEHALF OF THE PETITIONER:**

The Petitioner submitted that there was a legitimate expectation for an arbitral tribunal to hear the parties in an application under section 17 of the Act before passing any order.

No prayer had been made by the Respondent in the said Application to seek an *ex parte ad interim* order from the arbitral tribunal.

The Petitioner further submitted that it was alien to arbitration jurisprudence for an arbitral tribunal to pass an *ex parte ad interim* order without notice to the parties involved in the arbitral proceeding.

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<sup>1</sup> Commercial Arbitration Petition No. 597 of 2021

## **SUBMISSIONS ON BEHALF OF THE RESPONDENT:**

It was submitted by the Respondent that the cause for moving the said Application before the sole arbitrator was to prevent the Petitioner from frustrating any order that would be passed by the sole arbitrator in a previous application filed under section 17 of the Act by the Respondent before the sole arbitrator.

While referring to the impugned order of the sole arbitrator, it was submitted that upon the said Application being considered by the sole arbitrator, the facts set out therein called for *status quo* to be maintained till the said Application was heard.

## **JUDGEMENT:**

The High Court referred to the provisions of Chapter V of the Act which deals with the conduct of arbitral proceedings.

It was observed that sections 18, 19 and 24 of the Act were to be read in conjunction as they effectuate that parties to an arbitration proceeding need to be treated fairly at all stages and an adequate and/or sufficient opportunity should be made available to the parties to present their case before an arbitral tribunal.

The High Court observed that it would be incumbent upon an arbitral tribunal to give sufficient notice for hearing to the parties in an arbitral proceeding.

The High Court further observed that it is unknown to law and quite peculiar for an arbitral tribunal to pass an *ex parte ad interim* order,

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merely on the filing of an application under section 17 of the Act, without hearing the applicant or the contesting respondent therein, who would be affected and/or prejudiced by an *ex parte* order.

The High Court was of the opinion that the said Application did not reflect any extra ordinary situation for passing an *ex parte* order and that the reliefs prayed for in the said Application ought to have been granted only after hearing the Appellant and the Respondent.

Accordingly, the High Court set aside the *ex parte* order dated 8<sup>th</sup> October, 2021 and disposed the Petition.