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## **An arbitral tribunal's jurisdiction cannot be ousted on the ground that assets forming the subject matter of arbitration find reference in a provisional attachment order issued by the Enforcement Directorate**

The Delhi High Court ("Delhi HC") in *Lata Yadav vs. Shivakriti Agro Private Limited and Ors.*<sup>1</sup> held that the jurisdiction of an arbitral tribunal cannot be ousted simply because some part of the subject matter of arbitration proceedings is being investigated in parallel for fraud by the Enforcement Directorate ("ED") under the Prevention of Money Laundering Act, 2002 ("PMLA"). This finding is based on settled law that allegations of fraud simpliciter do not make a dispute non-arbitrable.

### **Brief facts**

Respondent no. 3 had made available some of its facilities on a job work basis to respondent no. 1. Respondent no. 3 was admitted into corporate insolvency resolution proceedings. Respondent no. 4 Limited Liability Partnership ("LLP") participated in respondent no. 3's insolvency proceedings and filed a resolution plan, which was approved. As per the resolution plan, respondent no. 4 LLP along with its partners, the Petitioner and respondent no. 2, were to discharge certain obligations. Accordingly, respondent no. 4 LLP approached respondent no. 1 to seek financial assistance and a facility agreement dated September 30, 2019, was executed ("**Facility Agreement**").

Respondent no. 1 initiated arbitration proceedings under the Facility Agreement on account of the fact that respondent no. 4 had breached its obligations under the Facility Agreement by attempting to create a charge on certain assets. During the arbitration proceedings, the representatives of respondent no. 1 and respondent no. 2 were arrested by the ED; and a provisional attachment order was passed in respect of the same assets which also formed the subject matter of the arbitration proceedings ("**PAO**"). Accordingly, the Petitioner and respondent no. 4 filed an application under Section 16 (3) read with Section 32 (2) (c) of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**") seeking termination of the arbitration proceedings on the ground that the disputes were non-arbitrable ("**Application**"). The Application was dismissed by the impugned order.

The Petitioner filed a writ petition under Section 227 of the Constitution of India before the Delhi HC challenging the impugned order and *inter alia* submitted that: (a) Section 5 of the Arbitration Act does bar the writ jurisdiction and given the same, the writ petition under Article 227 of the Constitution is maintainable against interlocutory orders of an arbitral tribunal; (b) by the PAO, the ED alleged that the monies advanced under the Facility Agreement were proceeds of crime and provisionally attached the assets under the Facility Agreement; (c) in the event that the allegations under the PAO are found to be correct, the Facility Agreement would be rendered void and unenforceable; (d) the allegations of fraud are serious in nature and criminal offences of a public nature cannot be referred to

<sup>1</sup> 2025 SCC OnLine Del 4334

arbitration; and (e) under Section 41 of the PMLA, no civil court or other authority has the jurisdiction to entertain proceedings in respect of any action to be taken by the designated authority under the PMLA.

Respondent no. 1 *inter alia* contended that: (a) the writ petition is not maintainable under Article 227 of the Constitution for failing to pass the twin test of disclosing an exceptional circumstance and the perversity of the complaint (which must be conspicuous); (b) the arbitral tribunal is not prevented from examining whether a valid Facility Agreement existed between the parties as well as the issue of fraud; (c) arbitration proceedings and PMLA proceedings operate under different statutory domains and one cannot have the effect of ousting the jurisdiction of the other; and (d) a mere allegation of fraudulent execution of a contract does not preclude the reference of underlying contractual disputes to arbitral proceedings between private parties.

## Issue

Whether the jurisdiction of an arbitral tribunal can be ousted on the ground that the assets forming the subject matter of arbitration proceedings find reference in a provisional attachment order issued by the ED?

## Findings and analysis

The Delhi HC dismissed the writ petition and *inter alia* held as follows:

1. the scope of interference while exercising jurisdiction under Article 227 of the Constitution is circumspect and limited to only exceptional circumstances where perversity is conspicuous on the face of it. No ground has been made out to warrant the interference of the impugned order;
2. while serious allegations of fraud are not arbitrable, allegations of fraud simpliciter do not make a dispute non-arbitrable<sup>2</sup>. Further, a mere allegation of fraud does not *ipso facto* mean that the disputes between the parties are non-arbitrable unless the court comes to a conclusion that the arbitration agreement is void<sup>3</sup>;
3. the jurisdiction of the arbitral tribunal cannot be precluded simply because some part of the subject matter of arbitration proceedings finds reference in the PAO and the matter is being investigated in parallel by the ED under the PMLA. Thus, merely alleging fraud does not render the disputes between the parties as non-arbitrable;
4. a transaction can give rise to both civil and criminal proceedings, which may proceed simultaneously. The effect of mere registration or progression of any parallel criminal proceedings does not bar the continuation of arbitral proceedings;
5. in the present case, the proceedings before the arbitral tribunal operate in a different sphere than those before the authorities under the PMLA. While some assets forming part of the arbitration proceedings have been provisionally attached, in case the findings recorded by the arbitral tribunal overlap with those in the criminal proceedings, the proceedings under the PMLA will take precedence since the arbitral tribunal is confined to determine issues which would not fall foul of Section 41 of the PMLA.

In view of the above, the Delhi HC held that since the arbitration proceedings are at an advanced stage, the arbitration proceedings cannot be pre-emptively terminated.

## Conclusion

By this judgement, the Delhi HC has affirmed that the jurisdiction of an arbitral tribunal is not ousted simply because some part of the subject matter of the arbitration proceedings is being investigated in parallel for fraud by the ED under the PMLA. Further, this judgement clarifies that in case of an overlap between the finding of an arbitral tribunal

<sup>2</sup> *Ayyasamy vs. A. Paramasivam* (2016) 10 SCC 386

<sup>3</sup> *Avantha Holdings Limited vs. CG Power and Industrial Solutions Limited* (2021) 4 HCC (Del) 267

and proceedings under the PMLA, the proceedings under the PMLA will take precedence. This judgement bolsters the settled principle that merely alleging fraud does not translate to the disputes between the parties being non-arbitrable.

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