

Breaking Down ‘Prabhat Steel Traders Pvt. Ltd v Excel Metal Processors Pvt. Ltd’

“A person having vital interest in the subject matter of arbitration agreement cannot be asked to watch proceedings from the fence and leave the arena for the parties to the arbitration agreement to cut swords, when the victim of the outcome of the dispute is none else but the person pushed to the fence.”

Facts Briefly

- The petitioner had purchased 46 HR steel coils.
- The petitioner entered into a Conducting Agreement with the respondent no. 3 (Respondent no. 1 is the parent company of the respondent no. 3) whereby the petitioner gave the said coils to the respondent no. 3 for storing, handling and recoiling on job work basis.
- In all of the said petitions, acknowledgements had been issued by the respondent no. 3 acknowledging the delivery and receipt of the respective coils from the petitioner.
- It was the case of the petitioner that the petitioner visited the said warehouse to take delivery of the said coils from the respondent no. 3 and noticed that some of the coils including the said coils of the petitioner were marked as "SIPL" in yellow paint.
- At that point of time, the offices of respondent no. 1 and respondent no. 3 informed the petitioner about some arbitration proceedings pending between respondent no. 1 and respondent no. 2 and that the coils which were purportedly claimed by the respondent no. 2 and have been attached/injuncted pursuant to an order dated 27th December, 2016 passed by the learned arbitrator.

Relief Prayed By The Petitioners

The High Court decided batch of 13 Petitions wherein the petitioners prayed for leave to appeal against the order passed by the arbitrator under section 17 of the Act and also prayed for setting aside the said impugned order granting interim measures



Yaman Deep
Associate Partner
E: Yaman@singhania.in



Ambika
Associate
E: ambika@singhania.in

against respondent no. 1 and in favor of the respondent no. 2 which was causing prejudice to the interest of the petitioners.

Per the Bombay High Court

- **Legislative Intent**

Section 34 of the Arbitration and Conciliation Act, 1996 also refers to the expression "party" which is absent in section 37 of the Arbitration Act. The fact that the expression "party" is absent in section 37 of the Arbitration Act makes the legislative intent clear that the said expression "party" is deliberately not inserted so as to provide a remedy of an appeal to a third party who is affected by any interim measures granted by the arbitral tribunal or by the Court in the proceedings filed by and between the parties to the arbitration agreement.

- **Section 9 Akin to Section 17**

Powers of Court under section 9 to grant interim measures and powers of the arbitral tribunal under section 17 of the Arbitration Act are identical in view of the amendment to section 17 with effect from 23rd October 2015, therefore, in the view of the Court, even a third party who is directly or indirectly affected by interim measures granted by the arbitral tribunal will have a remedy of an appeal under section 37 of the Arbitration Act.

- **Non Parties to Agreement may be Party to subsequent Proceedings**

Since the order passed by the learned arbitrator for interim measures at the behest of one of the parties to the arbitration agreement which would prejudice the right, title and interest of a third party, such third party who is not allowed to seek impleadment in the arbitration proceedings or to apply for modification and/or vacating the order of interim reliefs, will have a right of appeal under section 37 of the Arbitration & Conciliation Act, 1996 against such order