

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
CHENNAI**

Company Appeal (AT) (CH) No. 01 of 2021

In the matter of:

**Macquarie SBI Infrastructure Investments Ptd.Ltd.
Regd.Office 9, Straits View, 321-07 Marina One,
West Tower, Singapore 018937 &**

....Appellants

**SBI Macquarie Infrastructure Trustee Pvt.Ltd.
Regd.Office at 92, Level 9, North Avenue,
Maker Maxity, Bandra Kuria Complex,
Mumbai 400051 represented by authorisex signatory
Mr.Abraham George.**

V.

**1. Mr.K. Sadananda Shetty,
No.16, SahasraSree, I Main, I Block, RMV Extension,
Stage II, Bengaluru 560094.**

....Respondents

**2. Mr.Sanjith S.Shetty,
No.16, SahasraSree, I Main, I Block, RMV Extension,
Stage II, Bengaluru 560094.**

**3.Mr.Suchindra S.Shetty,
No.16, SahasraSree, I Main, I Block, RMV Extension,
Stage II, Bengaluru 560094.**

**4. Mrs.Sujatha S.Shetty,
No.16, SahasraSree, I Main, I Block, RMV Extension,
Stage II, Bengaluru 560094.**

**5. Encon Systems Pvt.Ltd.
37, RMJ, Mandoth Towers, 7th Cross,
Vasant Nagar, Bengaluru 560025.**

**6. Aoham Renewable Energy India Pvt.Ltd.
37, Ground Floor, RMJ,
Mandoth Towers, 7th Cross,
Vasant Nagar, Bengaluru 560025.**

**7. Ambuthirtha Power Pvt.Ltd.
Ground Floor, RMJ, Mandoth Towers, 7th Cross,
Vasant Nagar, Bengaluru 560052.**

8.Soham Mannapitlu Power Pvt.Ltd.
Ground Floor, RMJ,
Mandoth Towers, 7th Cross,
Vasant Nagar, Bengaluru 560052.

9. Sohan Phalguni Renewable Energy Pvt.Ltd.
Mandoth Towers, 7th Cross,
Vasant Nagar, Bengaluru 560052.

10. Sahasralingeswara Power Pvt.Ltd.
Ground Floor, RMJ,
Mandoth Towers, 7th Cross,
Vasant Nagar, Bengaluru 560052.

11. MSG Power Pvt.Ltd.
Ground Floor, RMJ,
Mandoth Towers, 7th Cross,
Vasant Nagar, Bengaluru 560094.

12. Soham Kolavuru Renewable Energy Pvt.Ltd.
Ground Floor, RMJ,
Mandoth Towers, 7th Cross,
Vasant Nagar, Bengaluru 560094.

**13. Ocean Deity Investments Holdings Limited PCC,
(Mauritius) Limited PLC**
Regd.Office : IMM Ltd. 4th Floor,
Les Cascades Building, Edith Cavell Street,
Port Louis, Republic of Mauritius)

14. Abhishek Poddar,
1604, Tower B, Omkar 1973 Offi.
Annie Besant Road, Worli, Mumbai 400049.
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15. Abraham George
A-306, Dosti Elite,
Sion-Koliwada Road, Sion, Mumbai 400022.

Present:

Appellant: Mr. Arun Kathpalia, Sr.Counsel
For Mr.Thriyambak Kannan, Advocates.
Respondents: Mr. Udhay Holla, Sr.Counsel with M/s Deepika Murali,
Advocates.

ORDER

Heard, the Learned Sr.Counsel Mr.Arun Kathpalia, for
the Appellants/Respondents No. 1 & 2.

2. The Learned Sr.Counsel for the Appellants/Respondents 1 & 2 assailed the impugned orders dated 22.12.2020 read with 7.1.2021 in IA 445 of 2020 in CP 77/BB/2020 passed by the National Company Law Tribunal, Bengaluru Bench, whereby and whereunder the Appellants/Respondents were directed to maintain 'Status Quo' as regards the impugned action in the Interlocutory Application with reference to arbitral proceedings initiated pursuant to the purported Drag notice and purported the conversion notice pursuant to the Arbitration Clause under 2015 SHA, pending disposal of the Application. Apart from this, the 'Tribunal' in the impugned order had proceeded to direct the posting of the Interlocutory Application along with the Company Petition on 7.2.2021 for filing hearing and the parties were directed to conclude the respective pleadings in the Application well before the next date of hearing.

3. The Learned Counsel for the Appellants contends that in the impugned order dated 7.1.2021 in CP 77/BB/2020 wherein it was observed that the issue in question is subjudice before the 'Tribunal' as well as the 'Appellate Tribunal', IA 445 of 2020 cannot be decided in isolation and viewed in that perspective, the 'Tribunal' was inclined to take up the IA 445 of 2020 along with the main Company Petition when the appeals are decided.

4. Besides the above, the 'Tribunal had observed that the interim orders passed on 22.12.2020 in IA 445 of 2020 were ordered to be extended until further orders and the main company petition and Interlocutory application were directed to be listed for final hearing on 5.2.2021.

5. The primordial contention of the Appellants/Respondents No.1 & 2 is that the 'Tribunal' had erred in coming to the conclusion in the Anti-Arbitration Application are the subject matter of previously filed appeals in New Delhi Bench, of Appellate Tribunal and resultantly the 'Tribunal' had also committed an error in concluding the issue in Anti-Arbitration Application is sub-judice before the New Delhi Bench by this Tribunal which is evidently not the case.

6. Yet another submission of the Learned Counsel for the Appellants is that an Application under section 8 of the Arbitration and Conciliation Act, 1996, to the Promoters Petition of maintainability was already on the file of Promoters Petition (as part of Appellant's reply) and as such the Tribunal arrived at an incorrect conclusion that the Petition of the Appellant of the Anti Arbitration Application was prima facie and untenable.

7. Continuing further, the Learned Counsel for the Appellants proceeds to take a plea that the 'Tribunal' had not taken into consideration of the vital fact that an Interlocutory Application was not maintainable before it, since the parties to the Company Petition are not even arrayed as parties in the Application, especially the subject Company i.e. Respondent No.6 was not impleaded in the Application.

8. The Learned Counsel for the Appellants takes a stand that the 'Tribunal' is not a 'Court' in terms of the Arbitration and Conciliation Act, 1996 and in reality, the 'Tribunal' usurped its powers to grant 'status quo' in regard to the LCIA Arbitration Proceedings.

9. The Learned Counsel for the Appellant apart from raising the aforesaid contentions also point out that the moot question that arises for ruminations is that whether the 'Tribunal' has necessary jurisdiction and requisite power to stop/suspend an Arbitration process in view of Section 5 of Arbitration and Conciliation Act, 1996?

10. At this juncture, for Respondents No.1 to 5, the Learned Counsel M/s Deepika Murali, takes notice and prays for time to file Reply/Response/Counter and accordingly is permitted to file Reply/Response/Counter within 2 weeks from today. As a matter of fact, the Reply/Response/Counter of Respondents 1 to 5 is to be served well in advance to the Learned Counsel for the Appellants/Respondents No.1 & 2. Notices to Respondents No.1 to 5 is waived by this 'Tribunal'. Soon after the receipt of the Reply/Response/Counter by the Respondents No.1 to 5, then, it is open to the Appellants/Respondents 1 and 2 and to file 'Rejoinder' if any, within 10 days thereafter. It is lucidly made quite clear that a copy of the 'Rejoinder' on behalf of the Appellants shall be served upon the Learned Counsel for the Respondents 1 to 5 within 5 days before the next date of hearing.

11. In respect of Respondents No.6 to 15, notice is ordered through Speed Post returnable by 3.3.2021. Let the Requisite

together with process fee be filed by the Appellants within 3 days from today. Notice to Respondents 6 to 15 is also directed to be issued to the e-mail address of the Respondents 6 to 15, in the event of Appellants furnishing the same. Mobile numbers of Respondents 6 to 15 may also be furnished by the Appellants to the Office of the Registry.

List the Appeal 'for Admission (After Notice)' on 3rd March, 2021.

***[Justice Venugopal M]
Member (Judicial)***

***[Balvinder Singh]
Member (Technical)***

01.02.2021

HR