

**(2009) 08 DEL CK 0401**

**Delhi High Court**

**Case No:** O.M.P. No's. 203 and 208 of 2009

Morgan Ventures Ltd.

APPELLANT

Vs

NEPC India Ltd.

RESPONDENT

**Date of Decision:** Aug. 4, 2009

**Acts Referred:**

- Arbitration and Conciliation Act, 1996 - Section 17, 9
- Civil Procedure Code, 1908 (CPC) - Order 38 Rule 5

**Citation:** (2009) 162 DLT 321 : (2010) 8 RCR(Civil) 3180

**Hon'ble Judges:** S.N. Dhingra, J

**Bench:** Single Bench

**Advocate:** Abhinav Vashisht, for the Appellant;

**Final Decision:** Dismissed

### **Judgement**

Shiv Narayan Dhingra, J.

These petitions/applications u/s 9 of the Arbitration and Conciliation Act, 1996 [for short "the Act"] have been filed by the petitioners with a prayer that this Court should restrain respondent company and its directors, officers from selling, disposing of, transferring, alienating, encumbering or creating third party rights or interests in the movable/immovable properties and assets of the respondent company including the investments made by the respondent in other companies.

2. The notice of the petition was duly served on the respondent, but the respondent did not appear.

3. The case of the petitioners is that the respondent had entered into agreements dated 7th October, 2003 with the petitioners for designing, supply, installation, testing and commission of Wind Energy Generators. The respondent company was not only to identify appropriate land with suitable wind velocity but was also to give a minimum guarantee of generation of 6,75,000 KwH units per machine per annum.

The respondent company failed to fulfill its obligations resulting into the petitioners invoking arbitration Clause and making claims against the respondent running into crores of rupees. The petitioners appointed arbitrator in terms of the arbitration Clause contained in the contract. An application u/s 17 of the Act was made by the petitioners before the arbitrator. However, the learned arbitrator did not hear and decide this application rather recused himself from the arbitration because of distasteful objections taken by the respondent company against the authority of the arbitrator. Thereafter, another arbitrator was appointed in terms of the agreement. The respondent did not put appearance before the other arbitrator despite notices.

4. The petitioners have submitted that this Court should issue injunction as prayed since the value of the claims of the petitioners were in crores of rupees and petitioners were likely to succeed before the Arbitrator and have the award in terms of their claims. The petitioners apprehended that the respondent in order to frustrate the award and to deprive the petitioners of fruits of award may alienate its properties movable and immovable.

5. This Court in *Goyal M.G. Gases Pvt. Ltd. v. Gulati Industrial Fabrication (P) Ltd.* in OMP No. 205/2009 observed as under:

6. A Division Bench of this Court in [Rite Approach Group Ltd. Vs. Rosoboronexport](#), has observed that the provisions of Order 38 Rule 5 CPC and the conditions stipulated therein can be read into Section 9 of the Arbitration and Conciliation Act while granting a relief of that nature. It is undisputed that the present application made by the petitioner u/s 9 is in the nature of an application under Order 38 Rule 5 CPC seeking an injunction before passing of decree against sale or transfer of any movable or immovable properties of the respondent. Such an injunction in fact amounts to bringing the entire business of the respondent to standstill since if this Court injuncts the respondent from disposing of or dealing with any movable or immovable assets, respondent would not be able to operate its bank accounts, would not be able to deal with the shares, securities or any of its properties. Such an injunction cannot be granted merely because the petitioner makes vague and unsubstantiated allegations that the respondent was out to sell his property without placing on record any material to show that any effort was made by the respondent in this direction. In order to grant such a relief, the Court has to be satisfied that the plaintiff had a *prima facie* case before the Arbitrator and after being satisfied on this ground, the Court has to be further satisfied that the respondent was attempting to remove or disposing of his assets with intention of defeating the award that may be passed.

6. In the above petitions, the petitioners have failed to place on record any material to show that they have a good *prima facie* case. Mere filing of a claim petition before the Arbitrator does not amount to having a good *prima facie* case. There are no restrictions in filing inflated claims before the Arbitrator because no Court fee is to be paid. In order to see that the claim petition filed by the petitioner was a genuine,

the Court has to scrutinize all the documents relied upon by the petitioner in support of the claim and the entire correspondence which took place between the parties. In absence of these documents and relevant material the Court cannot rule that the petitioner had a *prima facie* case. Even if the petitioners had a *prima facie* case, an order of the nature which is sought by the petitioners cannot be issued unless the petitioners satisfy that the respondent was out to sell its properties in order to defeat the claims of the petitioners. A mere imagination of the petitioner that the respondent may sell its properties in order to defeat the claim of the petitioners is not sufficient to have injunction in the nature of Order 38 Rule 5 CPC, even *ex parte*. The petitioners were supposed to place material on record showing that the respondent company was out to sell its properties in order to defeat the award that may be passed in favour of the petitioners. The kind of injunction being sought by the petitioners would bring the respondent company to a standstill, as an injunction against all movable and immovable properties would mean that the respondent would not be able to operate its bank accounts, transfer its shares and make payment to suppliers, creditors and employees. Such a blanket injunction cannot be granted to the petitioner unless there was serious apprehension based on material that the respondent company was about to be wound up or closed.

I find that the petitioners have not been able to make out a case for allowing the petitions/applications. The petitions are hereby dismissed.