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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgement reserved on 11.07.2019
Judgement pronounced on 23.12.2019

I.A. No.560/2018 & I.A. No.12743/2018 in
O.M.P.(I) (COMM.) 333/2016

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JINDAL STAINLESS LIMITED Petitioner
Through Mr. Abhimanyu Bhandari, Ms.
Nattasha Garg and Ms. Aashima
Singhal, Advs.

Versus

MOORGATE INDUSTRIES INDIA PVT. LTD Respondent
Through Mr. Akhil Sibal, Sr. Adv. with Mr.
Puneet Singh Bindra, Ms. Simran
Jeet, Ms. Smiti Tiwari and Ms. Nitya
Gupta, Advs.

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O.M.P. (COMM) 240/2018 & I.A.No.12741/2018

MOORGATE INDUSTRIES INDIA PRIVATE LIMITED
(ERSTWHILE STEM COR INDIA
PRIVATE LIMITED) Petitioner

Through Mr. Akhil Sibal, Sr. Adv. with Mr.
Puneet Singh Bindra, Ms. Simran
Jeet, Ms. Smiti Tiwari and Ms. Nitya
Gupta, Advs.

Versus

JINDAL STAINLESS LIMITED Respondent
Through Mr. Abhimanyu Bhandari, Ms.
Nattasha Garg and Ms. Aashima
Singhal, Advs.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J.:

Preface

1. The controversy raised in the instant matter exemplifies how legal legerdemain and artifice by parties knowingly or unknowingly can stultify a decision on merits by an arbitral tribunal. Despite the repeal of the old act i.e. the Arbitration and Conciliation Act, 1940 and the enactment of the new act i.e. the Arbitration and Conciliation Act, 1996 (in short “1996 Act”) and the subsequent amendments carried out in the 1996 Act, arbitral tribunals and courts continue to be enmeshed in procedural wrangles to the utter grief of the litigants and perhaps the legislator.

2. In a nutshell, the petitioner i.e. Moorgate Industries Pvt. Ltd. (hereafter referred to as “Moorgate”) is aggrieved by the order dated 28.12.2017, passed by the sole arbitrator, whereby its application under Section 32 of the 1996 Act seeking termination of the claim filed by the respondent [i.e. Jindal Stainless Steel Ltd. (hereafter referred to as “JSL”)] on the ground that it had no locus as the subject business undertaking had been transferred to its sister concern i.e. Jindal Coke Ltd. (hereafter referred to as “JCL”) was rejected.

3. Pertinently, Moorgate has preferred a counter claim before the learned arbitrator, which it, continues to press against JSL, although, at one stage, Moorgate had filed an amendment application under Section 23(3) of the 1996 Act for substituting JSL with JCL in the counter claim preferred against the former company. This application was pivoted on the knowledge that Moorgate had acquired during the course of the proceedings, concerning the composite scheme of arrangement sanctioned by the Punjab & Haryana High Court vide order dated 21.09.2015 (as modified by the order dated

12.10.2015) [hereafter referred to as “the scheme”] *qua* JSL and its sister concerns which included JCL.

3.1. In the amendment application filed by Moorgate, it sought substitution of JSL with JCL even while it was desirous of continuing to press its application under Section 32 of the 1996 Act for termination of the arbitration proceedings (which led to the passing of the impugned order by the learned arbitrator) on account of failure on the part of JSL to disclose that by virtue of the scheme, JCL had stepped into the shoes of JSL *qua* the matter in dispute.

4. Therefore, what is at the heart of the dispute is: whether the failure on the part of JSL to disclose the factum of sanction of the scheme by Punjab & Haryana High Court should result in termination of the arbitration proceedings? Since the learned arbitrator via the impugned order has held to the contrary and granted liberty to JSL to seek course correction from this court, Moorgate has filed the instant petition under Section 34 of the 1996 Act by treating the impugned order as an interim award.

4.1. The Moorgate’s petition under Section 34 of the 1996 Act is numbered as OMP (COMM) No.240/2018. In line with the liberty given by the learned arbitrator, JSL has filed an application i.e. I.A.No.560/2018 in OMP(I)(Comm)No.333/2016 for impleading JCL as a party to the arbitration proceedings. Likewise, JCL has filed an application i.e. I.A. No.12743/2018 in OMP(I)(Comm)No.333/2016 for its impleadment in the arbitration proceedings. Furthermore, JCL has also filed an application i.e. I.A. No.12741/2018, *albeit*, in Moorgate’s petition under Section 34 of the 1996 Act i.e. OMP(Comm) No.240/2018 for its impleadment in the arbitration proceedings.

5. Insofar as OMP(I)(Comm)No.333/2016 is concerned, this was a petition filed by JSL under Section 9 of the 1996 Act which along with an petition i.e. OMP(I)(Comm)No.288/2016, filed by Moorgate under the same provision, was disposed of by this court vide order dated 16.11.2016. It is *via* this order that the sole arbitrator came to be appointed as against an arbitral tribunal comprising three members, *albeit*, with the consent of parties.

6. Thus, before I proceed further, it would be necessary to advert to the broad contours of the case.

7. On 24.04.2012, Moorgate *via* its predecessor-in-interest Stemcor India Pvt. Ltd. (in short “Stemcor”) entered into a job works contract with JSL. Under the contract, JSL was required to convert coal supplied by Moorgate into coke at JSL's Coke Oven Facility situate at Kalinga Nagar Industrial complex, Duburi, Jajpur, Odisha.

8. Thereafter, the disputes arose between Stemcor and JSL. Resultantly, on 11.06.2013, Stemcor issued a notice of termination to JSL. The notice of termination, as stipulated under the contract, made it clear that the contract would stand terminated after the expiry of 180 days from the date of the notice.

9. JSL, vide a written communication dated 05.07.2013, addressed to Stemcor, acknowledged the receipt of the notice of termination and accepted the intention of Stemcor to terminate the contract, as expressed, on the defined date i.e. 08.12.2013.

10. Furthermore, *via* the very same communication, JSL communicated to Stemcor that it was required to pay an outstanding amount of Rs.43.55 crores, as crystalized on 30.06.2013.

11. As noticed above, JSL for its own reasons moved the Punjab & Haryana High Court for sanctioning a scheme of arrangement between itself and its sister concerns which included JCL. This scheme, which involved demerger and transfer of business undertaking No.3, which comprised the Coke Oven Facility, was sanctioned by the Punjab & Haryana High Court on 21.09.2015. This scheme was modified by that very same court vide order dated 12.10.2015. By virtue of this scheme, business undertaking No.3, which comprised within it, the Coke Oven Facility, stood transferred to JCL.

12. Since the parcel of land, on which the business undertaking No.3 stood situate, was owned by the Odisha Industrial Infrastructure Development Corporation (in short "IIDCO"), an application had to be moved for IIDCO's approval to transfer the right to use and sub-lease a part of land, *inter alia*, to JCL. This permission was granted by IIDCO on 24.09.2016.

13. The record shows that on that very date i.e. 24.09.2016, JSL and JCL lent their signatures to a side letter whereby JCL authorized JSL to operate business undertaking No.3 so as to ensure, *inter alia*, continuity of operations *qua* Coke Oven Facility. In this behalf, the said document also adverted to the fact that JCL had authorized JSL to realise and pay all monies and to complete, enforce or discharge all pending contracts, arrangements and obligations in relation to business undertaking No.3 "in trust" for JCL till the time JCL was in a position to inform JSL that it had received the necessary permits.

14. As noticed above, on 16.11.2016, this court while disposing of Section 9 petitions filed by Moorgate and JSL appointed, with consent, a sole arbitrator to adjudicate the disputes obtaining between the parties which arose out of the job works contract dated 24.04.2012.

15. On record is a letter dated 28.11.2016, which is addressed by JSL to JCL. *Via* this letter JSL undertook and confirmed to JCL that it would act as its trustee in respect of obligations and contracts which were relatable to business undertaking No.3 i.e. Coke Oven Facility.

16. It is in this background that in January 2017, JSL lodged a claim with the learned arbitrator. *Via* this action JSL claimed Rs.100.42 crores from Moorgate. Moorgate, in turn, as noticed above, filed a counter-claim against JSL amounting to Rs.13.85 crores.

17. In terms of the liberty given by this court vide order dated 16.11.2016, both, JSL and Moorgate, filed applications under Section 17 of the 1996 Act.

17.1 These applications were disposed of by the learned arbitrator vide order dated 04.02.2017. The learned arbitrator *via* order dated 04.02.2017, directed JSL to preserve the material/stocks lying at the subject site.

18. The record shows that on 29.06.2017, JSL entered into an agreement of sub-lease deed with IIDCO. This was followed by execution of a document titled “actual sub-lease”, between the same parties, on 29.07.2017.

19. Since pleadings in the arbitration proceedings were complete, the learned arbitrator fixed dates in the matter for cross-examination of witnesses. The record shows that JSL had cited two witnesses out of which the cross-examination of first witness stood completed on 13.07.2017.

20. It appears, in and about 01.08.2017, Moorgate became aware of the scheme sanctioned by the Punjab & Haryana High Court. This propelled Moorgate to file an application with the learned arbitrator on 10.08.2017 for termination of arbitration proceedings under Section 32 of the 1996 Act. JSL to stem the rot, so to speak, filed an application on 29.09.2017 with the learned arbitrator under Section 151 of the Code of Civil Procedure, 1908 (in short “CPC”) to place on record a resolution dated 22.09.2017 passed by the

Board of Directors of JCL. This resolution, in effect, ratified all acts undertaken by JSL in relation to business undertaking No.3 comprising Coke Oven Facility.

21. In other words, the actions taken, both, in this court as well as before the learned arbitrator, by JSL, up until that date were sought to be ratified by JCL. This resolution, *inter alia*, recorded that the Board of Directors had full knowledge of all actions that had been taken by JSL. Besides this, as indicated above, Moorgate had also filed an application under Section 23 of the 1996 Act to seek amendment of its counter-claim. The prayer made in the application was to substitute JSL with JCL on account of the fact that by virtue of scheme of demerger and transfer being sanctioned by the Punjab & Haryana High Court, liability, if any, *qua* the counter-claim made by Moorgate would befall on JCL.

21.1. As alluded to hereinabove, this application, before the arbitrator, was dismissed as withdrawn with liberty to refile the same, at the appropriate stage. It is in this background, that the captioned petitions and applications have been filed before this court by the parties in the matter, the details of which I have already set out hereinabove.

22. Before I proceed further, I must indicate that on behalf of JSL, preliminary objection has been taken *qua* the maintainability of the petition preferred by Moorgate under Section 34 of the 1996 Act on the ground that the impugned order passed by the learned arbitrator on an application preferred under Section 32 of the 1996 Act was not an interim award, as projected by Moorgate. In other words, the contention is that the order on an application filed under Section 32 is not amenable to challenge under Section 34 of the 1996 Act.

23. In support of this preliminary objection, reliance was placed by JSL on the following judgments:

- (i) ***Rhiti Sports Management Pvt. Ltd. Vs. Power Play Sports and Events Ltd.***, 2018 SCC Online Del 8678.
- (ii) ***Harinarayan G. Bajaj Vs. Sharedeal Financial Consultants Pvt. Ltd. & Anr.***, 2003 (2) MhLJ 598.

Submissions of counsel

24. Given this background, arguments on behalf of Moorgate have been advanced by Mr. Akhil Sibal, learned senior counsel, instructed by Mr. Puneet Singh Bindra, Advocate, while submissions on behalf of JSL have been advanced by Mr. Abhimanyu Bhandari, Advocate.

25. The submissions made by Mr. Akhil Sibal can, broadly, be paraphrased as follows :

(i) The preliminary objection raised on behalf of JSL that the present petition is not maintainable was not sustainable in view of the fact that had Moorgate's application under Section 32 been allowed, it would have lent finality to the proceedings, inasmuch as, it would have led to closure of the main proceedings. The impugned order was, thus, in effect an interim award as it takes a final view in respect of an issue which forms a subject matter of the main dispute arising between the parties. Since Moorgate had challenged the locus of JSL to maintain the claim, a decision on this issue affected the entire claim and hence was in the nature of an interim award, making it amenable to challenge under Section 34 of the 1996 Act. In support of this submission, reliance was placed on the following decisions :

- (a) ***Food Corporation of India vs. M/s Grewal Rice***, 2018 SCC Online Del 8203.

- (b) *Cinevistaas Ltd. Vs. Prasar Bharti*, OMP MANU/DE/0592/2019.
- (c) *ONGC Petro Additions Ltd. Vs. Tecnimont SPA*, OMP(COMM) 196/2019, High Court of Delhi.
- (ii) JSL had consciously withheld information with regard to this factum of the scheme being sanctioned by the Punjab & Haryana High Court which was material for adjudication of the case by the learned arbitrator. The learned arbitrator, while holding that this information was relevant and material and thus required disclosure erroneously observed that “it simply appears to be a case of left hand not knowing what the right hand is doing”.
- (iii) The arbitrator overlooked the fact that JSL had falsely averred that it was the owner of the Coke Oven Facility whereas, both, the sanctioned scheme and its own letter dated 28.11.2016, demonstrated that the contrary was true. Therefore, JSL’s conduct, which was imbued with dishonesty, should work against it in obtaining any relief from this Court.
- (iv) It was wrongly contended on behalf of JSL that arbitration proceedings had commenced on 12.06.2016 when Moorgate had filed its application under Section 9 of the 1996 Act. This argument was propounded on behalf of JSL to wrongly portray a picture that even though the scheme was sanctioned on 21.09.2015, it became effective only on 24.09.2016 when IIDCO granted approval for use and sub-lease of land on which business undertaking No.3 was situate. Moorgate too filed its petition under Section 9 prior to initiation of arbitration proceedings. Moorgate had not issued a notice under Section 21 of the 1996 Act before approaching this court under Section 9 for grant of interim relief.
- (v) JSL has filed its statement of claim and evidence before the learned arbitrator based on the stand that it is the owner of the Coke Oven Facility.

The pleadings filed in this behalf remain unamended to date. JSL having, thus, acted as a principal and not as an agent of JCL, cannot now argue that it was acting as a trustee for JCL. This argument flies in the face of the pleadings filed before the learned arbitrator.

(vi) The resolution passed by the Board of Directors of JCL does not constitute a valid ratification in the eyes of law qua omission and commission committed by JSL. In law, the actions taken by one party can be ratified by another if the former discloses that he had taken the actions on behalf of the latter. In the instant case, JSL has averred in the pleadings filed before the learned arbitrator that it is acting in its own right and not on behalf of JCL and therefore, JCL cannot now ratify the actions of JSL.

(vii) The learned arbitrator's conclusion that the controversy does not survive in view of the resolution passed by the Board of Directors of JCL is contrary to the pleadings on record. The statement of claim does not even remotely advert to the fact that JCL was the principal. Therefore, the impugned award is patently illegal and does not fall in the realm of a plausible view.

(viii) The argument advanced before this court that JSL was entitled to lodge a claim as if it was the principal till business undertaking No.3 was completely transferred to JCL was contrary to the findings arrived at by the learned arbitrator. In any event, such an argument is misconceived as after the effective date had been reached as per the terms of the scheme, JSL had no locus and/or legal right to lodge a claim with the learned arbitrator. The argument advanced on behalf of JSL that it acted as a principal till business undertaking no. 3 was completely transferred to JCL is contrary to JSL's own letter dated 28.11.2016 wherein it, *inter alia*, claimed that it will act as

a trustee *qua* business undertaking No.3 and will not treat the same as its own asset.

(ix) The applications filed by JSL and JCL in OMP(I)(Comm)No.333/2016 for impleadment of JCL in the arbitration proceedings are not maintainable as these have been moved in a Section 9 petition which already stands disposed of based on a consent order. Moorgate does not consent to impleadment of JCL in the arbitration proceedings.

(x) JCL is seeking to get around limitation *qua* its claim which is otherwise time barred by seeking impleadment in an action filed by JSL. The defence of limitation *qua* the claim being a substantial right which has accrued in favour of Moorgate cannot be ignored on the ground that substitution of JCL with JSL is a mere technicality.

26. On the other hand, Mr. Bhandari argued that when Moorgate filed its petition under Section 9 of the 1996 Act i.e. on 12.06.2016, the effective date, as defined under the scheme, which was, 24.09.2016, had not been reached. The argument was that the arbitration proceedings under Section 21 of the 1996 Act commenced much prior to the scheme coming into effect.

26.1. Furthermore, even after the effective date number 2, i.e. 24.09.2016 had been reached, the transfer of the Coke Oven Facility could not take place as permission of IIDCO was required and the sub-lease *qua* the parcel of land on which the Coke Oven Facility was located was executed in and about June-July 2017. For this purpose, reliance was placed on Clause 3.4(b) of the scheme.

26.2. It was in consonance with the provisions of Clause 3.4(b) of Part IV of the scheme that JCL had, vide letter dated 24.09.2016, authorized JSL to not only realize and pay monies but also to complete, enforce and discharge

all pending contracts, arrangements and obligations *qua* business undertaking No.3 as its trustee till necessary permits and licences were obtained by it; a request which was accepted by JSL vide letter dated 28.11.2016.

26.3. Besides this, it was argued that in terms of Clause 3.1(j) of Part IV of the Scheme, JCL would not only bear the burden but also enjoy the benefits, *inter alia*, of any judicial proceedings that may be initiated by or against JSL in connection with Coke Oven Facility.

26.4. It was further argued that, assuming without admitting that the impugned order is an interim award which is amenable to challenge under Section 34 of the 1996 Act, nothing has been brought to fore which is suggestive of the fact that the impugned order is either perverse or unconscionable. The impleadment of JCL as a party to the arbitration proceedings will sub-serve the interest of all the parties.

26.5. The argument advanced on behalf of Moorgate that while it can sue JSL but JSL in turn cannot sue Moorgate is completely baseless and disruptive of the arbitration proceedings. The conclusion, therefore, reached by the learned arbitrator in the impugned order that JCL is a proper and necessary party, both, vis-à-vis the claim(s) and the counterclaim, has merit and ought to be sustained. If JCL was arrayed as a party to the arbitration proceedings, neither the nature of the claims would change nor would any new evidence have to be introduced and if on the other hand, JCL's right to sue was curtailed while Moorgate were to be allowed to sue JCL *qua* its counterclaim, it would be unfair.

26.6. In order to buttress this argument, reference was made to the amendment application filed under Section 23 of the 1996 Act by Moorgate to substitute JCL in place of JSL. Since this application was withdrawn by

Moorgate with liberty to revive the same, it was contended that it was a case of approbation and reprobation. Thus, in support of this plea, reliance was placed on the following judgments :

- (i) *Suzuki Parasrampuriah Suitings Pvt. Ltd. vs. Official Liquidator of Mahendra Petrochemicals Limited & Ors*, (2018) 10 SCC 707.
- (ii) *Udham Singh vs. Ram Singh*, (2007) 15 SCC 529.

Reasons

27. Having heard learned counsel for the parties and perused the record, what emerges from the record *qua* which there can be no dispute is as follows :

- (i) The disputes arose between Stemcor i.e. the predecessor-in-interest of Moorgate and JSL concerning the job works contract dated 24.04.2012.
- (ii) Stemcor issued a notice of termination dated 11.06.2013 which was accepted by JSL on 05.07.2013. As per JSL's communication dated 05.07.2013, the job works contract dated 24.04.2012 would terminate on 08.12.2013.
- (iii) On 21.09.2015, Punjab & Haryana High Court sanctioned the scheme preferred by JSL concerning itself and its sister concerns including JCL. By virtue of this scheme, business undertaking No.3 i.e. Coke Oven Facility with all rights and liabilities, which inhere in it, stood transferred to JCL. Although, on 12.10.2015, Punjab & Haryana High Court modified this scheme, it did not touch upon this aspect of the matter i.e. the transfer of business undertaking No.3 to JCL.
- (iv) For transfer to take effect, approvals had to be sought from IIDCO. IIDCO granted its approval to the transfer of the right to use and sub-lease that part of the land on which business undertaking No.3 was situate in

favour of JCL only on 24.09.2016. The sub-lease agreement in the first instance was entered into between JSL and IIDCO on 29.06.2017 in favour of JCL. In the interregnum, on 16.11.2016, this court disposed of Section 9 petitions filed by Moorgate and JSL based on the consent of parties and appointed a sole arbitrator to adjudicate upon the disputes which had arisen between them. Furthermore, since all approvals, licences and permits had not been obtained by JCL for usage, trading and transport of coke under the Odisha Minerals (Prevention of Theft, Smuggling and Illegal Mining and Regulation of Possession, Storage, Trading and Transportation) Rules, 2007 (in short "2007 Rules"), on 24.09.2016, JCL and JSL executed a side letter in furtherance of provisions of Clause 3.4(b) of Part IV of the scheme. *Via* this side letter, JCL in effect authorized JSL to take steps to not only operate business undertaking No.3 but also to realize or pay monies and to complete, enforce or discharge all pending contracts, arrangements and obligations relating to the said undertaking, *albeit*, in trust for JCL.

28. The record shows that on that very date i.e. 24.09.2016, IIDCO had informed JSL that Steels and Mines Department of the Government of Odisha had given necessary clearance to allow transfer/right of use *qua* that parcel of land on which business undertaking No.3 was situate.

29. Furthermore, the record also shows that as a prelude to the execution of the sub-lease dated 29.06.2017, IIDCO vide letter dated 27.03.2017 granted permission to JSL to sub-lease the demised premises (on which business undertaking No.3 was situate) in favour of JCL. This aspect of the matter finds mention in the sub-lease dated 29.06.2017.

30. It is in this context that on 28.11.2016, JSL responded to the request made by JCL vide its letter on 24.09.2016 to act on its behalf as its trustee *qua* matters concerning business undertaking No.3.

31. The claim before the learned arbitrator was foregrounded by these crucial antecedent facts and circumstances. In the statement of claim filed by JSL, there was no reference to the scheme being filed and it being sanctioned by the Punjab & Haryana High Court. The question therefore, which arises, to my mind, for consideration is: will that by itself, in law, prevent JCL from entering the fray?

32. For this purpose, in my opinion, one needs to understand the nature of the proceedings preferred by JSL before the Punjab and Haryana High Court. JSL, admittedly, had filed a scheme of demerger and transfer concerning itself and various sister concerns which included JCL.

33. The scheme which was preferred under Sections 391 and 394 of the Companies Act, 1956 and Section 230 of the Companies Act, 2013 which are *pari materia* with the provisions of the earlier Companies Act, received the approval, to the satisfaction of the High Court, by requisite shareholders of both, the transferor company i.e. JSL and the transferee company, which included JCL, both, in value and numbers, and thereafter also received the seal of approval of the High Court itself after being subjected to the requisite checks and balances which involved the intercession of the Regional Director, Ministry of Corporate Affairs, Government of India.

34. The court, while sanctioning the scheme, is required to examine, not its commercial wisdom, but whether or not it is violative of any provision of law or is unconscionable or contains provisions which are contrary to public policy. Once the court reaches to a conclusion that the scheme preferred does not violate any statutory provision and is not unfair to those who would be impacted by the scheme which includes its creditors, employees and workmen and, therefore, is neither unconscionable nor otherwise contrary to public policy, it puts its imprimatur on the scheme.

35. The scheme operates as law and upon being sanctioned binds third parties as well. Therefore, if this is the nature of the scheme, then in my opinion, it would matter very little as to whether or not JSL disclosed the fact that the scheme had been sanctioned by the Punjab & Haryana High Court.

36. Thus, in the eyes of law, all rights, obligations and liabilities, as envisaged under the scheme *qua* business undertaking No.3 stood transferred in favour of JCL. Further steps that had to be taken to effectuate the transfer were ministerial, which is why IIDCO recognizing this fact entered into the sub-lease agreements dated 29.06.2017 and 29.07.2017. Therefore, the only entity in my view which could have the carriage of proceedings would be JCL irrespective of the fact whether JSL disclosed this aspect to this court or the arbitral tribunal.

37. Whether the non-disclosure was wilful or unintentional on account of lack of understanding of the import of the order passed by the Punjab & Haryana, High Court, upon the scheme becoming effective pursuant to it being sanctioned, JCL, in law would stand substituted in place of JSL. If this principle is not followed, it would amount to throttling the will of the shareholders of the two companies i.e. JSL and JCL after it received the imprimatur of the court of competent jurisdiction.

38. Thus, in this view of the matter, I have no difficulty in sustaining the conclusion reached in the impugned order which, in effect, accepts the substitution of JSL by JCL leaving the final direction to be passed by this court. Therefore, as noted above, this court would only, in a sense, can give recognition to the fact that the order of the Punjab and Haryana High Court sanctioning the scheme has in fact brought about the substitution of JSL with JCL.

39. Thus, for the foregoing reasons, I find no merit in the petition preferred by Moorgate under Section 34 of the 1996 Act. Resultantly, OMP(Comm)No.240/2018 is dismissed recognising the fact that JSL, in law, stood substituted by JCL with the scheme being sanctioned. The argument advanced on behalf of Moorgate that applications for impleadment of JCL, whether in already disposed Section 9 petition or in Section 34 petition would not lie, in my opinion, would have no relevance.

40. Accordingly, the arbitration proceedings will continue hereafter from the stage at which they are presently positioned. JCL would thus, have the carriage of proceedings, both, vis-à-vis the statement of claim as well as the counterclaim, preferred by Moorgate. Consequently, I.A.No.560/2018 and I.A.No.12743/2018 filed in OMP(I)(Comm)No.333/2016 and I.A.No.12741/2018 in OMP(Comm)No.240/2018 shall stand disposed of in the aforesaid terms.

41. Before I close, it may be relevant to note that, though, the last order passed by this court seems to depict that I.A.No.7846/2018, which was an application filed for condonation of delay in refiling of Section 34 petition, was pending on that date, the same was in fact disposed of on 13.09.2018.

(RAJIV SHAKDHER)
JUDGE

DECEMBER 23, 2019

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