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IN THE HIGH COURT OF DELHI AT NEW DELHI

CORAM: HON'BLE MR. JUSTICE AMIT BANSAL

4th January, 2022

CM(M) 2/2022 & CM No.176/2022 (for interim relief)

FUTURE RETAIL LTD. *versus* AMAZON.COM NV INVESTMENT HOLDINGS LLC & ORS.

Petitioner Through Mr. Harish Salve, Mr. Sandeep Sethi, Mr. Ritin Rai, Senior Advocates with Mr. Raghav Shankar, Ms. Madhu Gadodia, Mr. Harshvardhan Jha, Ms.Ritika Sinha and Ms. Arshiya Sharda, Advocates.

Respondents Through Mr. Gopal Subramanium, Mr. Rajiv Nayar, Mr. Gourab Banerji, Mr. Amit Sibal, Mr. Nakul Dewan, Senior Advocates with Mr. Anand S Pathak, Mr. Amit K Mishra, Mr. Shashank Gautam, Ms. Sreemoyee Deb, Mr.Vijay Purohit, Mr. Mohit Singh, Mr. Promit Chatterjee, Ms. Anubhuti Mishra, Mr. Shivam Pandey, Ms. Samridhi Hota, Ms. Nikita Bangera, Mr. Pratik Jhaveri, Mr. Faizan Mithaiwala, Ms. Didon Misri, Mr. Chetan Chawla, Mr. Vijayendra Pratap Singh, Mr. Rachit Bahl, Ms. Roopali Singh, Mr. Abhijnan Jha, Mr. Priyank Ladoia, Mr. Tanmay Sharma, Ms. Vanya Chhabra, Mr. Arnab Ray, Mr. Vedant Kapur, Mr. Shaurya Mittal, Mr. Abhisar Vidyarthi, Mr. Kartik Nayar, Mr. Pawan Bhushan, Ms. Hima Lawrence, Ms. Ujwala Uppaluri, Mr. SP Mukherjee, Mr. TS Sundaram, Mr. Vinay Tripathi, Mr. Aishvary Vikram, Mr. Kaustubh Prakash, Ms. Anushka Shah, Ms. Neelu Mohan, Ms. Smriti Kalra and Ms. Manjira Dasgupta, Advocates for respondent No.1. Mr. Mukul Rohatgi, Mr. Dayan Krishnan, Senior Advocates with Mr.Mahesh Agarwal, Mr. Rishi Agrawala, Mr. Karan Luthra, Mr.Pranjit Bhattacharya, Mr.Sanjeevi Seshadri and Mr. Ankit Banati, Advocates for respondents No.2 to 13.

CM(M) 3/2022 & CM No.179/2022 (for stay)

FUTURE COUPONS PVT. LTD. & ORS. *versus* **AMAZON.COM NV INVESTMENT HOLDINGS LLC & ANR.**

Petitioners Through Mr. Mukul Rohatgi, Mr. Dayan Krishnan, Senior Advocates with Mr.Mahesh Agarwal, Mr. Rishi Agrawala, Mr. Karan Luthra, Mr.Pranjit Bhattacharya, Mr.Sanjeevi Seshadri and Mr. Ankit Banati Advocates.

Respondents Through Mr. Gopal Subramanium, Mr. Rajiv Nayar, Mr. Gourab Banerji, Mr. Amit Sibal, Mr. Nakul Dewan, Senior Advocates with Mr. Anand S Pathak, Mr. Amit K Mishra, Mr. Shashank Gautam, Ms. Sreemoyee Deb, Mr.Vijay Purohit, Mr. Mohit Singh, Mr.Promit Chatterjee, Ms. Anubhuti Mishra, Mr. Shivam Pandey, Ms. Samridhi Hota, Ms. Nikita Bangera, Mr. Pratik Jhaveri, Mr. Faizan Mithaiwala, Ms. Didon Misri, Mr. Chetan Chawla, Mr. Vijayendra Pratap Singh, Mr. Rachit Bahl, Ms. Roopali Singh, Mr. Abhijnan Jha, Mr. Priyank Ladoia, Mr. Tanmay Sharma, Ms. Vanya Chhabra, Mr. Arnab Ray, Mr. Vedant Kapur, Mr. Shaurya Mittal, Mr. Abhisar Vidyarthi, Mr. Kartik Nayar, Mr. Pawan Bhushan, Ms. Hima Lawrence, Ms. Ujwala Uppaluri, Mr. SP Mukherjee, Mr. TS Sundaram, Mr. Vinay Tripathi, Mr. Aishvary Vikram, Mr. Kaustubh Prakash, Ms. Anushka Shah, Ms. Neelu Mohan, Ms. Smriti Kalra and Ms. Manjira Dasgupta, Advocates for respondent No.1. Mr. Harish Salve, Mr. Sandeep Sethi, Mr. Ritin Rai, Senior Advocates with Mr. Raghav Shankar, Ms. Madhu Gadodia, Mr. Harshvardhan Jha, Ms.Ritika Sinha and Ms. Arshiya Sharda, Advocates for respondent No.2.

JUDGMENT

1. Both the present petitions filed under Article 227 of the Constitution of India arise out of the same arbitration proceedings tilted as *Amazon.com NV Investment Holdings LLC v. Future Coupons Private Limited*, being SIAC Arbitration No.960 of 2020, involving, *inter alia*, (i) Amazon.com NV Investment Holdings LLC [hereinafter 'Amazon'], (ii) Future Coupons Private Limited [hereinafter 'FCPL']; and, (iii) Future Retail Limited [hereinafter 'FRL'].

2. The challenge in CM(M) 3/2022 is to the impugned orders dated 29th December, 2021, 30th December, 2021 and 31st December, 2021 passed by the Arbitral Tribunal, whereas in CM(M) 2/2022, the orders dated 29th December, 2021 and 30th December, 2021 passed by the Arbitral Tribunal have been impugned. In both the petitions, further relief is sought to declare the continuation of the arbitration proceedings as contrary to law and to direct the Arbitral Tribunal to decide the termination applications filed by the petitioners on 23rd December, 2021 before continuing with the arbitration proceedings.

3. The impugned order dated 29th December, 2021 is in relation to the Procedural Order No.6 issued by the Arbitral Tribunal, whereby the Arbitral Tribunal has stated/observed that:

(i) In view of the extensive preparations made for the hearing of the expert witnesses from 05th January to 08th January, 2022, the Arbitral Tribunal does not consider it correct to abandon the said hearing for hearing the termination applications filed on behalf of the petitioners.

(ii) It is not clear whether or not the order dated 17th December, 2021 of the Competition Commission of India (CCI) is appealable and hence, cannot form the basis for termination of the arbitration proceedings.

(iii) In view of the strength of the legal team of the parties and the fact that the aforesaid dates in January, 2022 were fixed long time back, there is no reason to adjourn the said hearings.

(iv) The issue as to when to hear the termination applications is an issue of case management and therefore, the Arbitral Tribunal has the full discretion to decide when to hear the said applications.

4. The second impugned order dated 30th December, 2021 is also stated to be in reference to Procedural Order No.6, whereby the Arbitral Tribunal has stated/observed that:

(i) The Arbitral Tribunal has not taken any decision with regard to implications of the CCI order on the continuation of the said arbitration. What was expressed in the impugned order dated 29th December, 2021 was only the preliminary view of the Arbitral Tribunal so that the parties can address submissions accordingly.

(ii) It was noted that the Arbitral Tribunal will give reasonable opportunity to all the parties to present their submissions on the matter of implication of the CCI order on

the arbitration proceedings.

(iii) In view of the parties being asked to file their written submissions in support of their respective contentions in respect of the termination applications, one day for hearing would be sufficient for the oral submission of the parties.

(iv) Dates for hearing of the expert witnesses in January, 2022 were agreed by the parties until just before Christmas i.e., 25th December, 2021.

(v) No prejudice would be caused to the petitioners if the hearing on the termination applications be conducted after the hearing on the parties' expert witnesses on damages.

(vi) If the petitioners are successful in their request for termination of arbitration, the option to claim costs would also be available for them.

(vii) The Arbitral Tribunal had offered to hear the termination applications on 04th January, 2022 by adding an extra day. However, since the lead counsel of FRL was not available on the said date, the hearing could not be scheduled on 04th January, 2022.

(viii) An endeavour would be made to find dates before May, 2022 for hearing on the termination applications.

5. The impugned order dated 31st December, 2021 is actually an email from the Arbitral Tribunal to the counsel for FCPL clarifying that the impugned order/email sent by the Arbitral Tribunal on 30th December, 2021 to FRL be also taken as a response to FCPL.

6. Mr. Mukul Rohatgi, senior counsel appearing on behalf of FCPL in CM(M) 3/2022 assailed the aforesaid impugned orders of the Arbitral Tribunal and made the following submissions:

(i) The application filed by the FCPL under Section 32(2)(c) of the Arbitration and Conciliation Act, 1996 [hereinafter 'Arbitration and Conciliation Act'] goes to the very root of the matter and therefore, ought to be decided at the outset without further continuing with the arbitration proceedings. In the event that the termination applications are allowed, there would be no requirement for proceeding with the hearing of the expert witnesses.

(ii) The said application is not based on a mere averment but is in fact based on an order dated 17th December, 2021 passed by a statutory authority, CCI, in terms of which the earlier approval granted by the CCI in respect of the agreement between FCPL and Amazon has been kept in abeyance as the same was held to be obtained by fraud and costs of Rs.2,00,00,00,000/- were imposed on Amazon.

(iii) In light of the aforesaid order passed by the CCI, the agreement itself between Amazon and FCPL, which contains the arbitration clause, would not survive and therefore, the arbitration proceedings have to be terminated.

(iv) One day may not be sufficient for hearing the termination applications, as culled

out by the Arbitral Tribunal.

7. Mr. Harish Salve, senior counsel appearing on behalf of FRL in CM(M) 2/2022 made the following submissions:

(i) The Arbitral Tribunal has consistently violated the principle of equal opportunities as mandated in Section 18 of the Arbitration and Conciliation Act.

(ii) The Arbitral Tribunal has itself, in its email dated 22nd December, 2021, noted that the expert reports filed on behalf of the claimant are not backed by any pleadings or submissions on legal principles and had therefore, directed the claimant to file a short synopsis on the applicable legal principles for violation of the losses allegedly suffered by the claimant as a result of various breaches of the contract committed by the respondents. Amazon was directed to file the said submissions by 28th December, 2021 and FRL was directed to file its reply by 01st January, 2022.

(iii) The law firm representing FRL had brought to the attention of the Arbitral Tribunal that some lawyers of their firm working on the present matter have tested positive for COVID-19. Therefore, the Arbitral Tribunal was requested to defer the hearing of the expert witnesses, as scheduled for the month of January, 2022 and instead take up the termination application filed on behalf of the petitioner for hearing on the said dates. In this regard, reference is made to the emails dated 28th December, 2021 and 31st December, 2021 sent by lawyers of FRL to the Arbitral Tribunal.

(iv) Hearing of the expert witnesses scheduled for 05th to 08th January, 2022 be adjourned and instead the aforesaid dates be utilized for hearing on the termination applications filed on behalf of both the petitioners.

8. Mr. Gopal Subramanium, senior counsel appearing on behalf of Amazon made the following submissions:

(i) The present petitions under Article 227 of the Constitution of India are not maintainable.

(ii) The present petitions have been filed only to delay the on-going arbitration proceedings between the parties.

(iii) The reports of the two experts were filed as far back as on 09th and 10th October, 2021 and so, there was ample time for the petitioners to prepare for the cross-examination.

(iv) The dates in January, 2022 for hearing of the expert witness were fixed as far back as on 13th October, 2021.

(v) The experts from both sides, scheduled to appear on the said dates in January, 2022, would be from different parts of the world and therefore, it would cause a lot of inconvenience if the aforesaid scheduled dates are cancelled/postponed.

(vi) The Arbitral Tribunal has, throughout, been accommodative towards various requests made by the petitioners and therefore, it is wrong to state that equal opportunity has not been provided to the petitioners. The Arbitral Tribunal was willing

to hear the termination applications on 04th January, 2022 itself, before the dates for hearing of expert witnesses. However, the same could not be scheduled on account of non-availability of the lead counsel for FRL.

(vii) The date for hearing on the termination applications has been fixed on 08th January, 2022 so as to give sufficient time for the parties to file written submissions.

(viii) The Arbitral Tribunal has the full discretion to decide upon the procedural aspects of the arbitration.

9. Mr. Amit Sibal, senior counsel appearing on behalf of Amazon states that:

(i) The grievance of FCPL stands redressed with the subsequent email dated 01st January, 2022, wherein the date of 08th January, 2022 has been fixed for oral hearing on the termination applications. Amazon has already filed its reply on merits on 29th December, 2021 to the application for termination.

(ii) Substantial progress has already been made in the arbitration proceedings and bulk of hearings have already been completed.

(iii) The hearing schedule in January, 2022 in respect of the expert witnesses, is to determine the quantum of damages, which is the alternate relief claimed in the arbitration proceedings by Amazon.

10. In rejoinder, it is submitted on behalf of the senior counsels for the petitioners that the Arbitral Tribunal itself expressed difficulty in understanding the expert evidence and also acknowledged the fact that there were no pleadings in support of the said expert evidence. Therefore, it is reiterated that no prejudice would be caused if the hearing scheduled in January, 2022 for the expert witnesses is not postponed and instead, the said dates are utilized for hearing the termination applications filed on behalf of the petitioners.

11. I have heard the senior counsels appearing on behalf of all the parties and considered the rival submissions.

12. The grievance of the petitioners is that in terms of the impugned orders dated 29th December, 2021 and 30th December, 2021, no date has been fixed for a hearing on the termination applications. However, the said grievance of the petitioners stands redressed by the subsequent email dated 01st January, 2022 of the Arbitral Tribunal (placed on record before this Court as a part of the additional affidavit filed on behalf of the petitioners in CM(M) 3/2022), in terms of which the date of 08th January, 2022 has been fixed for hearing on the termination applications. The relevant part of the said email is extracted below:

“

…

***3.** The current position is that, despite the Tribunal’s previous offers to accommodate each Party’s demands, we have not reached consensus owing to various factors which are apparent from the correspondence. Hence the Tribunal’s current position*

remains as stated in (i) Procedural Order No. 6 dated 14 November 2021, (ii) Procedural Order No. 7 dated 20 December 2021, and (iii) the Tribunal's email of 29 December 2021, which still bind the Parties to appear for the Experts Hearing from 5 to 8 January 2022.

***4.** That said, the Tribunal is prepared to try and accommodate to the extent possible the concerns of each Party, and makes the following proposal for consideration.*

4.1 The Tribunal will set aside one day of the 4-day hearing to receive oral submissions on the Termination Applications, and that day will be Saturday, 8 January 2022.

***4.2 The choice of 8 January 2022 for this oral hearing is to enable the Parties to make written submissions in advance of the oral hearing.** Respondent No. 2 and Majority Respondents shall file and serve their respective submissions **by 7 pm IST on Tuesday, 4 January 2022**, and Claimant shall file its submissions **by 7 pm IST on Thursday, 6 January 2022**.*

4.3 If, at the end of the hearing on 8 January 2022, the Tribunal is persuaded that further submissions on the Termination Applications would assist it in reaching its decision, the Tribunal may either order further written submissions to be filed or find another day for further oral submissions after hearing the Parties.

***4.4 The remaining 3 days (i.e. 5 to 7 January 2022) will be dedicated to the Experts Hearing, with some modifications in the hearing procedures previously discussed.**"*

13. A perusal of the aforesaid email amply demonstrates that the Arbitral Tribunal has been accommodating towards all parties. This is evident from the fact that the Arbitral Tribunal has cut short the scheduled four days' hearing of the expert witnesses to three days and the fourth day i.e., 08th January, 2022, has been fixed for oral hearing on the termination applications filed by the petitioners. It is to be noted, that earlier, the date for hearing of the termination applications was fixed for 04th January, 2022 but on account of the non-availability of the lead counsel of FRL, the said hearing could not be scheduled on 04th January, 2022. It is further noted by the Arbitral Tribunal that if further oral submissions are required to be made, the Tribunal would find another date for the said purpose.

14. The other grievance of FCPL in CM(M) 3/2022 is that the Arbitral Tribunal is continuing with the scheduled hearings from 05th January to 07th January, 2022 in respect of the expert witnesses of the parties, while deferring the hearing on the termination application filed on behalf of FCPL. The contention of Mr. Rohatgi is that the hearing of the termination applications should have taken priority over the hearings of the expert witnesses as the said applications go to the very root of the matter and the arbitration proceedings would not survive if the aforesaid applications filed on behalf of the petitioners were allowed. I do not find merit in this submission. Just because the hearing of the termination applications is scheduled for a date after

the hearings of the expert witnesses does not mean that the Arbitral Tribunal is not willing to consider the said applications on merits or is discounting the merits of the said applications. It is in the sole discretion of the Arbitral Tribunal to decide whether the termination applications should be heard before or after the hearings of the expert witnesses. A perusal of the record shows that the Arbitral Tribunal has given cogent reasons for scheduling the hearing of the termination applications on 08th January, 2022. This was to enable the parties to make written submissions in advance of the said hearing. Therefore, no prejudice would be caused to the petitioners if the hearing of the termination applications is conducted on 08th January, 2022. In any event, it is not for this Court to interfere with the scheduling of the arbitration proceedings as sought in the present case.

15. This Court does not find merit in the contention of the petitioners that one day may not be sufficient for oral hearing on the termination applications. In this regard it may be noted that the Arbitral Tribunal has directed the parties to make detailed written submissions in advance. Clearly, this is to reduce the time for making oral submissions. In any case, the Arbitral Tribunal has observed that in the event that the hearing is not concluded in one day, another date will be fixed for the said purpose. Further, the impugned order dated 30th December, 2021 stipulates that in the event that the petitioners succeed in their request for termination of the arbitration, they would be entitled to claim costs. Therefore, in my *prima facie* view, there is nothing to suggest that the Arbitral Tribunal has denied equal opportunity to the parties or that the Arbitral Tribunal has not been accommodating towards requests of the petitioners.

16. It is a matter of common knowledge that in international commercial arbitrations involving parties as well as specialist arbitrators from different jurisdictions, it is difficult to schedule dates and therefore, the requests of the parties to adjourn or postpone the dates fixed much in advance are generally not acceded to. In the present case, Amazon is a foreign entity, whereas the Future Group Companies are Indian companies. As submitted by the parties in the course of oral submissions, two of the arbitrators are based in Europe and the Chairman of the Arbitral Tribunal is based in Singapore. It is common ground that the experts, whose hearings are scheduled in January, 2022, are also from different parts of the world.

17. As regards the submission made on behalf of FRL that the expert evidence sought to be led on behalf of Amazon is not backed by pleadings, the Arbitral tribunal has, in paragraph 7 of the impugned order of 30th December, 2021, adequately dealt with the contention as under:

"7. The Tribunal does not consider it appropriate to address at this stage Respondent No. 2's assertions regarding the admissibility of Claimant's damages evidence. These matters will be addressed in the Tribunal's award, as required. ***However, the Tribunal would briefly note as a general observation that the contents of pleadings are a matter of discretion for counsel drafting those pleadings.*** *If opposing counsel considers that the pleadings as drafted are objectionable for any reason, it is open to opposing counsel to make appropriate applications. In the present*

case, the Tribunal does not recall any applications by any Counsel for Claimant to supplement or clarify its pleadings. It was the Tribunal which was having difficulty in understanding Claimant's expert reports without the benefit of having had Claimant's approach to relief as a whole sufficiently clarified. Accordingly, the Tribunal made its PO 8 on 22 December 2021 to direct a supplementary submission on applicable legal principles for the valuation of the losses suffered by Claimant as a result of the various Respondents' alleged breaches of contract. The Tribunal would also note that Respondents did not object to this procedure at the time. ***The Tribunal may add that, in arbitration, pleadings have less significance than in litigation: what matters is that both parties are made reasonably aware of the opposing party's case in order to have a proper opportunity of meeting that case****. Whether the information about Claimant's case on relief is given by way of pleading or by an oral submission (in an opening statement), or in written submissions before the evidentiary hearing, is not a material issue. What matters is the adequacy of the information provided to ensure that the Tribunal is made aware of all the necessary information and arguments on both sides to arrive at a properly informed decision."*

18. Keeping the aforesaid in mind, this Court finds no infirmity in the decision of the Arbitral Tribunal in not postponing the hearings of the expert witnesses scheduled in January, 2022. In the opinion of this Court, acceding to such a request for adjournment, is bound to derail the arbitration proceedings as it would be very inconvenient and cumbersome to schedule fresh dates for the arbitration proceedings, taking into account the availability of all arbitrators as well as the experts.

19. It has been submitted on behalf of FRL in CM(M) 2/2022 that some of the lawyers representing the said petitioners have tested positive for COVID-19, and therefore, the preparations for the examinations scheduled in January, 2022 have been adversely affected. This is an unfortunate development. However, in my view, the same cannot be a ground for postponement of hearings, the dates of which were fixed a long time ago, taking into account the convenience of the parties and giving ample time to prepare in respect thereof. It is to be noted that the COVID-19 pandemic is a reality that the world has been living with for the last two years and may continue to live with for the near foreseeable future. Therefore, the business community at large as well as professionals, including lawyers/law firms, would have to learn to live with this reality and continue with their regular professional and business activities, subject of course, to any regulations that may be imposed by state/national governments. Court hearings as well as hearings in arbitrations have been successfully conducted in this period of two years through the virtual mode. A lot of conferences and meetings, where physical presence of parties was required earlier, have now given way to virtual conferences, which have proven to be almost as effective as physical hearings/conferences. Even as of today, when COVID-19 cases are on the rise in India, Courts in the country, including the Supreme Court of India, continue to function, albeit through the virtual mode. Functioning during the COVID-19 pandemic is a reality that lawyers, judges and arbitrators have had to come to terms with.

20. It has been noted in the impugned order dated 30th December, 2021 that till before

Christmas of 2021, the petitioners did not make any request for rescheduling the dates. All the parties in the present arbitration proceedings are big corporations and have a battery of lawyers representing them before multiple fora. Even if some of the lawyers have tested positive for COVID-19, it can be duly expected that the parties and their law firms would endeavour to make alternate arrangements. An adjournment at the last minute cannot be sought in respect of an international commercial arbitration of this magnitude, involving arbitrators, counsels and experts from different jurisdictions.

21. Next, I shall consider the issue of jurisdiction - whether in exercise of jurisdiction under Article 227 of the Constitution of India, this Court can interfere with the impugned orders dated 29th December, 2021 and 30th December, 2021 passed by the Arbitral Tribunal, which are mere procedural orders.

22. Section 5 of the Arbitration and Conciliation Act states as follows:

"5. Extent of judicial intervention.—Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part."

23. The judgment of the Supreme Court in ***Deep Industries Limited Vs. Oil and Natural Gas Corporation Limited and Another***, (2020) 15 SCC 706, which deals with the scope of interference with arbitration proceedings in exercise of jurisdiction under Article 226/227 of the Constitution of India, may also be reproduced hereinbelow:

"16. Most significant of all is the non obstante clause contained in Section 5 which states that notwithstanding anything contained in any other law, in matters that arise under Part I of the Arbitration Act, no judicial authority shall intervene except where so provided in this Part. *Section 37 grants a constricted right of first appeal against certain judgments and orders and no others. Further, the statutory mandate also provides for one bite at the cherry, and interdicts a second appeal being filed [see Section 37(2) of the Act].*

17. This being the case, there is no doubt whatsoever that if petitions were to be filed under Articles 226/227 of the Constitution against orders passed in appeals under Section 37, the entire arbitral process would be derailed and would not come to fruition for many years. At the same time, we cannot forget that Article 227 is a constitutional provision which remains untouched by the non obstante clause of Section 5 of the Act. In these circumstances, what is important to note is that though petitions can be filed under Article 227 against judgments allowing or dismissing first appeals under Section 37 of the Act, yet the High Court would be extremely circumspect in interfering with the same, taking into account the statutory policy as adumbrated by us hereinabove so that interference is restricted to orders that are passed which are patently lacking in inherent jurisdiction."

24. Undoubtedly, in view of the fact that Article 227 of the Constitution of India is a

constitutional remedy, there cannot be a complete bar to the petitions being filed under Article 227. However, as noted above, there is only a very small window for interference with orders passed by the Arbitral Tribunal while exercising jurisdiction under Article 227. The said window becomes even narrower where the orders passed by the Arbitral Tribunal are procedural in nature. Therefore, this window cannot be used for impugning case management orders passed by the Arbitral Tribunal, which are in the nature of procedural orders. Such orders are completely in the domain and discretion of the Arbitral Tribunal, and include orders relating to the scheduling of the arbitration proceedings or the order in which applications filed by the parties are to be considered or the timelines in relation to the arbitration proceedings. This Court, in exercise of jurisdiction under Article 227, cannot dictate to a duly constituted Arbitral Tribunal, the manner and the procedure of carrying out the arbitration proceedings.

25. Furthermore, in the judgment dated 13th August, 2021 in CM(M) 525/2021 titled ***Ambience Projects & Infrastructure Pvt. Ltd. Vs. Neeraj Bindal***, I have held that the Arbitration and Conciliation Act is a complete code in itself. The intent of the Arbitration and Conciliation Act is to ensure expeditious disposal of disputes between the parties and that there is minimum interference by the Courts with the arbitration proceedings. If the parties are encouraged to approach the Court at every stage of the arbitration proceedings, the whole purpose of the arbitration would stand frustrated.

26. Under the provisions of the Arbitration and Conciliation Act, the Arbitral Tribunal is the sole master of the procedures. In this regard, reference may be made to Section 19 of the said Act, which is set out below:

"19. Determination of rules of procedure.—

(1) The arbitral tribunal shall not be bound by the Code of Civil Procedure, 1908 (5 of 1908) or the Indian Evidence Act, 1872 (1 of 1872).

(2) Subject to this Part, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting its proceedings.

(3) Failing any agreement referred to in sub-section (2), the arbitral tribunal may, subject to this Part, conduct the proceedings in the manner it considers appropriate.

(4) The power of the arbitral tribunal under sub-section (3) includes the power to determine the admissibility, relevance, materiality and weight of any evidence."

27. Reference herein may also be made to the decision of this Court in ***Silor Associates SA Vs. Bharat Heavy Electrical Limited***, 2014 SCC OnLine Del 3407 [FAO(OS) No.370/2014 preferred whereagainst was dismissed on 1st September, 2014], followed by me in the judgment dated 28th October, 2021 in CM(M) 958/2021 titled ***Telecommunication Consultants India Limited Vs. B.R. Sukale Construction***, wherein it has been held as follows:

"19. There is nothing in the Act to contra indicate the existence of jurisdiction/power

in the Tribunal to require the parties to produce documents, exhibits or other evidence, as the Arbitral Tribunal may determine. ***The aforesaid provision has the effect of vesting the Tribunal with much greater autonomy in the matter of regulating its procedure for conduct of the arbitration proceedings, than that exercised by a civil court - which is bound by the rigour of the Code of Civil Procedure (CPC) and the Indian Evidence Act. The scheme contained in Section 19 of the Act is not to denude the Arbitral Tribunal of its power to regulate its procedure for effective and expeditious conduct of the arbitration proceedings in a transparent and fair manner. On the contrary, the legislative intent appears to be vest the Arbitral Tribunal with autonomy and flexibility in the matter of conduct of its proceedings so as to expedite the proceedings and cut the procedural wrangles witnessed in courts - which are governed by the CPC and the Evidence Act.***

20. *The procedure that the Tribunal may adopt for conducting the proceedings need not be evolved by consensus of the parties. It is for the Tribunal to devise its own procedure, if the parties have themselves not evolved the procedure consensually under Section 19(2)."*

28. The position that emerges from a reading of the above is that arbitrators have far greater flexibility in adopting procedure to conduct the arbitration proceedings as compared to the Civil Court. The Arbitral Tribunal is not bound by the procedure of the Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872. This flexibility would also vest the discretion in the Arbitral Tribunal to decide the manner in which the proceedings are to be conducted, including the order in which the applications filed by the parties are to be considered. For this Court to interfere in the aforesaid issues would be violative of the autonomy vested in the Arbitral Tribunal.

29. Furthermore, in the judgment in ***Surender Kumar Singhal and Others Vs. Arun Kumar Bhalotia and Others***, 2021 SCC OnLine Del 3708 [Special Leave Petition (Civil) No. 6171/2021 preferred whereagainst was dismissed on 27th April, 2021], the scope of jurisdiction to be exercised by the High Court under Article 226 and 227 of the Constitution of India in respect of proceedings arising under the Arbitration and Conciliation Act, has been elucidated by this Court as follows:

"25. A perusal of the above-mentioned decisions, shows that the following principles are well settled, in respect of the scope of interference under Article 226/227 in challenges to orders by an arbitral tribunal including orders passed under Section 16 of the Act.

(i) An arbitral tribunal is a tribunal against which a petition under Article 226/227 would be maintainable;

(ii) The non-obstante clause in section 5 of the Act does not apply in respect of exercise of powers under Article 227 which is a Constitutional provision;

(iii) For interference under Article 226/227, there have to be 'exceptional circumstances';

(iv) Though interference is permissible, unless and until the order is so perverse that it is patently lacking in inherent jurisdiction, the writ court would not interfere;

(v) Interference is permissible only if the order is completely perverse i.e., that the perversity must stare in the face;

(vi) High Courts ought to discourage litigation which necessarily interfere with the arbitral process;

(vii) Excessive judicial interference in the arbitral process is not encouraged;

(viii) It is prudent not to exercise jurisdiction under Article 226/227;

(ix) The power should be exercised in 'exceptional rarity' or if there is 'bad faith' which is shown;

(x) Efficiency of the arbitral process ought not to be allowed to diminish and hence interdicting the arbitral process should be completely avoided. ”

30. As noted hereinabove, there is nothing to suggest that the Arbitral Tribunal has denied equal opportunity to the parties or that the Arbitral Tribunal has not been accommodating towards requests of the petitioners. Mere fixation of tight timelines or denial of requests for adjournment by the Arbitral Tribunal or deciding the order in which the Arbitral Tribunal considers the applications filed by the parties cannot be reason enough to contend that the orders of the Arbitral Tribunal are perverse or lacking in inherent jurisdiction. Therefore, no exceptional circumstances or perversity have been demonstrated/made out in the petitions or during the hearing to warrant the exercise of jurisdiction by this Court under Article 227 of the Constitution of India.

31. Furthermore, all rights and contentions of the petitioners with regard to the violation of any provisions of the statute as well as the arbitration being conducted in violation of the agreement would be open to challenge by the petitioners under Section 34 of the Arbitration and Conciliation Act.

32. In view of the discussion above, no grounds are made out for interference in the present petitions.

Dismissed.