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***SREI Equipment Finance Limited v. Trinity Alternative Investment Managers Limited, 2025:CHC-OS:87 – Calcutta High Court clarifies interim protection scope under Arbitration Act and SARFAESI Act***

**The Calcutta High Court meticulously examined the intersection between interim protections under Section 9 of the Arbitration and Conciliation Act, 1996 and proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act)**

The case stemmed from a rupee loan agreement executed on August 28, 2020, and a supplementary agreement dated November 2, 2020. Under these agreements, SREI Equipment Finance Limited (the Petitioner) advanced INR 26 Crores to Trinity Alternative Investment Managers Limited (the Respondent). To secure repayment obligations, deeds of hypothecation were executed, establishing a first charge over all present and future investments of the Respondent. The dispute arose when the Respondent defaulted on its repayment obligations, prompting the Petitioner to invoke measures under both the Arbitration Act and the SARFAESI Act.

Initially, the Court granted interim relief by issuing an injunction restraining the Respondent from operating its bank account maintained with

ICICI Bank without preserving a minimum balance of INR 40 Crores. This order aimed to secure an outstanding amount claimed to exceed INR 53 Crores, inclusive of principal and interest.

The Respondent subsequently filed an application to vacate this injunction, arguing that the loan was not an external commercial borrowing but essentially an internal investment made by the holding company, SIFL, into Trinity, both of which shared common ownership and control at the time of loan disbursal. It contended that, given these internal arrangements and the automatic injunction under Section 13(13) of the SARFAESI Act following the issuance of notice under Section 13(2), additional interim measures were unnecessary. The Respondent further argued that the injunction severely impeded its operational capabilities and adversely affected third-party investments.

In response, the Petitioner highlighted the Respondent's conduct, alleging non-disclosure and obstruction during attempts to secure assets under the SARFAESI Act. The Petitioner emphasized discrepancies in asset valuation and disclosure, raising concerns regarding the integrity and reliability of the Respondent's submissions. It cited multiple instances where the Respondent allegedly disposed of or redeemed hypothecated investments despite existing

injunctions, which the Petitioner argued demonstrated malafide intentions.

The Court, analyzing these arguments, noted the admitted principal amount due but identified substantial inconsistencies and ambiguities regarding the valuation and ownership of disclosed investments. While the Court recognized the Petitioner's legitimate interest in securing its claim, it carefully balanced this interest against statutory protections and operational considerations. It emphasized that the original hypothecation agreements clearly delineated the security scope and did not provide explicit provisions for additional security measures in response to asset valuation fluctuations. It rejected the Petitioner's plea for additional securities, citing judicial precedents such as *Raman Tech & Process Engg. Co. v. Solanki Traders, (2008) 2 SCC 302*, which caution against converting unsecured creditors into secured creditors through judicial intervention.

The Court also considered the broader corporate restructuring context involving the Corporate Insolvency Resolution Process (CIRP) of both SREI Equipment Finance Limited and its parent company, SIFL. Under the Insolvency and Bankruptcy Code (IBC), both entities were under common administrative oversight, with a resolution plan already approved by the National

Company Law Tribunal (NCLT). This resolution plan provided substantial oversight by National Asset Reconstruction Company Limited (NARCL), effectively managing both companies. Consequently, the Court found that sufficient regulatory safeguards were already in place, mitigating the risk of asset dissipation.

Ultimately, the Court concluded that maintaining the initial bank account injunction would disproportionately harm the Respondent's operational viability without commensurately enhancing the Petitioner's security. Hence, it modified the injunction to lift the restriction on the bank account, simultaneously reinforcing injunctions against the disposition or redemption of all disclosed and future investments. Additionally, the Court mandated the Respondent to furnish audited financial statements and disclose further investment details to ensure transparency and ongoing oversight.

This decision significantly clarifies the judiciary's cautious approach towards granting interim measures, underscoring the necessity of carefully balancing creditor protection with debtor operational integrity, particularly within complex inter-company relationships and broader insolvency frameworks. The ruling reaffirms that statutory safeguards under the SARFAESI Act and oversight mechanisms within insolvency proceedings are often sufficient protections, thus

preventing unnecessary judicial interventions that could potentially disrupt business operations and market stability.

Section 13(13) of the SARFAESI Act, 2002 provides automatic statutory protection for secured creditors by prohibiting debtors from disposing or transferring secured assets once notice under Section 13(2) is issued. This provision safeguards creditors' interests by preventing asset depletion during enforcement proceedings. However, courts exercising jurisdiction under Section 9 of the Arbitration and Conciliation Act, 1996 must carefully balance interim protections to avoid prejudicing operational viability. Judicial interpretation emphasizes that statutory mechanisms under SARFAESI often adequately secure creditor claims, limiting judicial intervention to situations where statutory protections are insufficient or where there exists a significant risk of asset dissipation requiring additional interim relief.

***M/s Tarmat Ltd. v. Union of India and Others, 2023:JKLHC-JMU:2499 – Jammu & Kashmir and Ladakh High Court addresses arbitration fee disputes under transitional arbitration regimes***

**The Court provided clarity regarding the arbitrator's fee structure applicable during**

**the transition period following the repeal of the Jammu & Kashmir Arbitration and Conciliation Act, 1997 and its replacement by the Arbitration and Conciliation Act, 1996.**

The dispute emerged from a contract dated May 19, 2012, between M/s Tarmat Ltd. (Petitioner) and the Union of India, involving resurfacing work on the Awantipur runway in Kashmir. An arbitration clause within the contract led to arbitration proceedings due to disputes arising between the parties. Initially, the Chief Justice of the High Court appointed Sh. Prakash Makhijani as the sole arbitrator on March 10, 2023. However, Makhijani recused himself without commencing proceedings, prompting the Court to appoint Sh. Sorabh Mathur as his replacement under similar terms.

The pivotal legal question arose regarding the arbitrator's fees amidst a change in the applicable arbitration law. Initially governed by the J&K Arbitration and Conciliation Act, 1997, this law was repealed and replaced by the central Arbitration and Conciliation Act, 1996 following the J&K Reorganization Act, 2019. Under the repealed local statute, the arbitrator had significant discretion to determine the fees, whereas the amended central law, particularly through Section 31(8) and Section 31-A, established a detailed regime and specified fees payable under the Fourth Schedule.

In this case, arbitrator Sh. Sorabh Mathur proceeded substantially through arbitration and charged fees according to the Fourth Schedule of the Arbitration and Conciliation Act, 1996. While the Petitioner willingly paid its share, the Union of India disputed the prescribed scale, insisting on payment based on a lower fee schedule specified by the Engineer-in-Chief's Branch Military Engineering Service in its empanelment letter.

The Union of India filed an application seeking modification of previous Court orders and requested a determination that the arbitrator's fees should align with the lower, administrative scale. The dispute created a stalemate, halting the arbitration's final stages, with the arbitrator unwilling to accept reduced fees.

Upon careful consideration, the Court addressed the transitional conflict arising from the change in legal regimes. It noted the original discretion afforded under the local J&K Act contrasted with the prescriptive regime under the amended central Act. The Court underscored the principle that once the central Act came into force, the arbitrator's fees were indeed governed by the Fourth Schedule, thus validating the arbitrator's position in charging fees according to this standard schedule.

Despite recognizing the validity of the Fourth Schedule fees, the Court sought a pragmatic

interim solution to resolve the immediate stalemate without prejudicing either party's rights. The Bench directed the Union of India to deposit its share of fees, as claimed by the arbitrator, within thirty days. This deposit was ordered to be held in a fixed deposit by the Registrar Judicial, Jammu, thus enabling the arbitrator to pronounce the final award promptly.

The Court's approach balanced the arbitrator's right to appropriate fees under the new statutory framework with the Union of India's contestation rights, preventing undue disruption of arbitration proceedings. It emphasized the necessity of ensuring arbitration efficiency while safeguarding parties' rights to contest fee-related disputes subsequently.

Ultimately, this judgment reaffirms the primacy of statutory arbitration fee structures post-legislative transition periods, illustrating judicial flexibility in resolving transitional arbitration disputes pragmatically. It underscores the judiciary's commitment to upholding procedural efficacy and fairness, facilitating the prompt resolution of arbitration matters without compromising either party's equitable rights.

Section 31(8) and the Fourth Schedule of the Arbitration and Conciliation Act, 1996, introduced by the Arbitration and Conciliation (Amendment) Act, 2015, provide a

standardized framework for arbitrators' fees in domestic arbitration, promoting predictability and fairness. This statutory fee schedule reduces disputes arising from ambiguous or arbitrary fee structures, ensuring that arbitrators cannot unilaterally impose fees without clear statutory authority or mutual agreement. Courts uphold this structured approach to maintain arbitration efficiency, safeguard procedural fairness, and avoid unnecessary litigation over arbitral remuneration, thereby reinforcing arbitration as a preferred dispute resolution mechanism by fostering transparency and economic rationality in the arbitration process.

**Union of India Through The General Manager Central Railway v. PLR HC RBR JV, 2025:BHC-OS:9305 – Bombay High Court clarifies arbitration scope concerning contract modifications and interim payments**

**The Court examined the validity of arbitral awards relating to disputes over contract extensions, additional works, and payments under contracts governed by stringent procedural conditions.**

The dispute arose from an agreement dated September 24, 2018, concerning railway infrastructure work between Wardha and Nanded. PLR HC RBR JV (the Contractor) entered into

the agreement with the Union of India through Central Railway (Railways), with the contract valued at approximately Rs. 124.96 crores and a stipulated completion period of 24 months. The project required periodic Running Account Bills (RA Bills) to track progress and payments, secured by performance guarantees and deposits.

As the project advanced, additional work beyond the initial scope was carried out, documented through joint measurements and recorded in RA Bills. The Contractor requested time extensions citing delays attributed to the Railways, including delays in land acquisition and Covid-19 related disruptions. Initially, the Railways approved extensions without penalty, accepting price variations. However, with a change in the management team overseeing the project, the Railways disputed additional works and withheld payments, specifically contesting the seventh and eighth RA Bills.

The Railways argued that additional works were unauthorized, asserting these constituted contractual modifications that required formal written consent under Clause 41 of the General Conditions of Contract (GCC). They further contended that the Contractor was responsible for project delays, justifying their decision under Clause 17-B of the GCC, leading to penalties and denial of price variation claims.

The Arbitral Tribunal evaluated extensive documentary evidence, including joint measurement books and past payment approvals by the Railways. The Tribunal found the Railways' refusal to pay for additional works unjustified, emphasizing that the Railways had actively overseen and confirmed the work, with documentation evidencing approval and acceptance. It concluded that refusing payment would result in unjust enrichment of the Railways.

The Tribunal also rejected Railways' claims of deficiencies in work and alleged overpayments, noting the absence of counterclaims and insufficient evidence presented during arbitration. It ruled in favor of the Contractor, mandating payment of the disputed RA Bills, allowance of price variations, issuance of a completion certificate for the works measured, and release of the security deposit.

Challenging this arbitral award under Section 34 of the Arbitration and Conciliation Act, 1996, the Railways argued that the Tribunal's decisions contravened Clause 41 of the GCC and Article 299 of the Constitution of India, which mandates contracts involving the state to be formally executed. The Railways contended that the additional works, not formally ratified, constituted unauthorized contractual modifications.

The High Court meticulously analyzed these contentions. It upheld the Tribunal's findings, recognizing that joint measurement books and prior payments established a clear consensus and implicit approval from the Railways. It emphasized that strict adherence to Clause 41 was satisfied through documentation already on record. The Court further clarified that Article 299's requirements were fulfilled as an executed agreement existed, negating the argument that the Tribunal exceeded its jurisdiction.

Additionally, the Court affirmed the Tribunal's rejection of the Railways' subsequent stance attributing delays to the Contractor, highlighting the inconsistency and lack of supportive evidence. The Court noted the legitimacy of the Contractor's claims, especially considering disruptions caused by the Covid-19 pandemic, which the Railways had earlier recognized.

Ultimately, the High Court dismissed the Railways' petition, finding no grounds for interference under Section 34. It confirmed the Tribunal's award, including payments for additional works, entitlement to price variation, issuance of completion certificates, and release of security deposits. The judgment underscored the principle that parties cannot arbitrarily shift positions on contractual obligations without substantiating their claims convincingly and

consistently, especially in complex infrastructure projects managed under rigorous oversight.

The ruling reinforces judicial restraint in arbitration matters, emphasizing the sanctity of documentary evidence and prior contractual conduct, thus ensuring fairness and preventing unjust enrichment in contractual disputes.

Clause 41 of the General Conditions of Contract (GCC) for railway projects explicitly mandates formal written approval for contract modifications or additional works, aligning with Article 299 of the Indian Constitution, which requires government contracts to be formally executed. Courts emphasize that documented mutual consent, even through consistent conduct and official records like joint measurement books, can satisfy these formal requirements.

Judicial scrutiny under Section 34 of the Arbitration and Conciliation Act, 1996 upholds arbitral awards unless clear procedural irregularities or violations of contract terms are demonstrated, underscoring judicial reluctance to interfere with arbitrators' factual findings based on comprehensive documentary evidence and prior contractual actions.

**Manbhupinder Singh Atwal v. Neeraj Kumarpal Shah, 2025:GujHC:30582-DB – Gujarat High Court addresses unilateral**

***fixation of arbitrator's fees and procedural fairness under Arbitration Act***

**The Court discussed critical issues concerning unilateral fixation of arbitral fees, violation of natural justice, and allegations of bias in an international commercial arbitration.**

The dispute arose from international commercial arbitration proceedings where the appellant, a Non-resident Indian partner, alleged misappropriation and embezzlement of funds by one of the respondents, prompting him to seek damages and recovery. The arbitral tribunal awarded substantial sums in favor of the appellant, including INR 22.19 crores for misappropriation of LLP funds, damages of INR 84 crores for loss of profits, and significant costs covering arbitration and related legal proceedings.

During proceedings, the respondents challenged the arbitral tribunal's unilateral fixation of fees, claiming it breached the principles of natural justice and showed bias. They argued that the arbitrators had violated party autonomy by determining fees without mutual consent, which should have resulted in the tribunal's disqualification. The respondents further argued that they were denied a fair opportunity to present their case, particularly regarding the rejection of

their counter-claim due to their refusal to pay the arbitrators' fees.

Examining these contentions, the Court considered Section 12(1) and (5) of the Arbitration Act, emphasizing the mandatory requirement of arbitrator disclosure regarding impartiality and independence. The Court recognized that while the unilateral determination of fees was improper, it was a curable issue, and a dispute over such fees could be reviewed by courts independently. It further held that denial of the counter-claim due to fee disputes did not necessarily indicate bias or violation of natural justice, as counter-claims are independent proceedings and could be pursued separately.

In addressing allegations of bias and violation of natural justice, the Court noted that mere unilateral determination of fees or refusal to adjudicate counter-claims due to non-payment could not automatically imply bias. Rather, such allegations required clear and convincing evidence demonstrating actual prejudice or lack of impartiality, which the respondents failed to provide.

Ultimately, the Court upheld the arbitral tribunal's award relating to the appellant's claims of misappropriation and embezzlement but invalidated the award of damages and loss of profits as speculative and unsupported by

evidence. It affirmed that issues related to arbitral fees must be resolved independently by judicial review, separate from the validity of the arbitral award itself.

This decision highlights the nuanced approach required when addressing procedural and substantive fairness in international commercial arbitrations, clarifying the limited grounds upon which an arbitral award may be challenged under Indian law.

Section 12(5) of the Arbitration and Conciliation Act, 1996, introduced by the 2015 Amendment, mandates disclosure by arbitrators of circumstances that may give rise to justifiable doubts regarding their impartiality or independence. This provision is pivotal in preserving procedural integrity and fairness in arbitration proceedings. Courts interpret allegations of bias or procedural unfairness cautiously, requiring concrete and convincing evidence of actual prejudice or violation of natural justice. Mere administrative irregularities, such as unilateral fixation of arbitral fees, while procedurally incorrect, do not automatically imply bias. Judicial intervention typically focuses on substantive procedural violations that significantly impair a party's opportunity to present its case.

