

**NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH**

**CA No. 30 of 2016 and
CA NO.30/2017
IN
CP NO. 146(ND)/2012
RT No.27/2016**

M/s Aar Kay Chemicals Pvt. Ltd. & Ors. ...Petitioners

Versus.

M/s A.P.Refinery Pvt. Ltd. & Ors. ...Respondents

Present: Ms. Tushita Ghosh and Mr. Aniruddha Choudhury, Advocates
for petitioners.
Mr. J.S.Puri and Mr. Ashish Bansal, Advocates for respondents.

Learned counsel for respondents No. 3 and 6 has filed CA No.30/2017 with a prayer for disposal of CA NO. 255/2015 by framing preliminary issue regarding lack of jurisdiction of this Tribunal to proceed further in the matter on merits in view of passing of the arbitral award dated 12.07.2015. Copy of the CA has already been supplied to the counsel for the petitioners and the prayer of respondents is opposed.

Having heard the learned counsel for both the parties on this application, we are of the view that the respondents should argue the case on merits simultaneously with pressing CA No. 255 of 2015. We say so for the reason that the petitioners have concluded arguments on merits of the case and respondents have submitted arguments on CA No. 255/2015 whereas they have yet to initiate arguments on merits. When the matter was heard on 24.08.2016, it was observed that the arguments on the application shall be heard along with the main petition. Even on 13.01.2017, the following order was passed:-

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"Learned counsel for the respondents submits that the other connected Company Petition No.84(ND)/2013 / RT No.29/2016 is also fixed for today and according to him both the cases are interlinked for the purpose of arguments. Learned counsel for the respondents also referred to the order dated 26.08.2014 wherein it is observed that this petition is to be heard before Company Petition No.84(ND)/2013, but orders in both have to be passed simultaneously. CP No.84(ND)/2013 / RT No.29/2016 has been adjourned to 01.02.2017. List this matter also for 01.02.2017".

For disposal of CA No. 30/2017, brief submissions by both the parties may be referred but without prejudice to the merits of the application or the main petition. Learned counsel for the petitioners contends that there are nine petitioners but the signatures on behalf of petitioner No. 1 and petitioner No. 6 Companies (hereinafter referred to as P-1 & P-6) and those of P-7 to P-9 do not appear either on the alleged Arbitration Agreement or the alleged Arbitral Award, whereas according to the learned counsel for respondents the constitution of the Board of Directors of P-1 and P-6 is that P-2 to P-5 are the Directors of these Companies. The learned counsel for respondents further submits that petitioners No. 7 to 9 are the relatives of P-2 and P-5 who have

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signed these documents.

We are of the considered view that since the petitioners have already made submissions on merits of the case, CA No. 255/2015 will be heard along with main petition on merits. All the issues involved in the case are to be taken into consideration while passing final judgement in this case, otherwise disposal of CA No.255/2015 separately may prejudice even the merits of the case. The instant CA No. 30/2017 filed by respondents No. 3 and 6 is thus dismissed. Learned counsel for the respondents, however, seeks time to argue the case on merits.

List the matter on 24.03.2017 for arguments in the main petition along with CA No. 255 of 2015 and thereafter it will be taken up on day to day basis.

— SD —
(Justice R.P. Nagrath)
Member (Judicial)

— SD —
(Deepa Krishan)
Member(Technical)

March 07, 2017
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