

**SUPREME COURT OF INDIA**

Nicco Corp.Ltd.

Vs.

Prysmian Cavie Sistemi Energia S.R.L

C.A.No.7270 of 2009

(Tarun Chatterjee and G.S. Singhvi and Dr.B.S.Chauhan JJ.)

29.10.2009

**ORDER**

Leave granted.

1. This appeal is directed against the order dated 29th July, 2009 of the Division Bench of the Calcutta High Court whereby it vacated the interim order passed by the learned Single Judge in G.A. No.678 of 2009 in C.S. No.69 of 2009.

2. We have heard learned Senior Counsel appearing for the parties at length and perused the records. We find even though the Division Bench did notice the plea of respondent no.1 that the Frame Agreement has 1 been superseded or novated on 8th October, 2008 and such agreement of novation has again been superseded on 4th December, 2008, and as such there is no arbitration agreement subsisting between the parties, but without deciding whether said plea is tenable, vacated the ad interim injunction granted by the learned Single Judge apparently because it was of the view that in such matter the Court does not have jurisdiction to stand in the way of any arbitration proceeding held outside India.

3. The Division Bench then directed the parties to file affidavits and requested the learned Single Judge to decide the injunction application at the earliest.

4. In our view, the Division Bench should have examined the entire issue in the light of the pleadings of the parties and documents produced by them and then decide whether the ad interim order passed by the 2 learned Single Judge deserves to be continued or vacated.

5. We are further of the view that ends of justice will be met and the litigation will be shortened if the Division Bench is requested to decide the injunction application filed by the appellant in its entirety in the light of the pleadings and documents of the parties. In the result, the appeal is allowed, the impugned order is set aside.

6. Respondent no.1 is directed to file reply to the injunction application along with documents within a period of two weeks from today. Further affidavit and documents on

behalf of the appellant herein may be filed within the next two weeks. The Division Bench of the High Court is requested to dispose of the injunction application itself within eight 3 weeks thereafter without being influenced by the observations, if any, made in the impugned order.

7. The interim order, which was granted by this Court while issuing notice, shall continue for a further period of three months or till the disposal of the injunction application by the Division Bench of the High Court, whichever is earlier. We make it clear that it would be open for the parties to move this Court for an appropriate order in the event the injunction application is not decided within the time specified by us herein above.