

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No(s). 2747 OF 2020
(Arising out of SLP(CIVIL) No.7857 of 2020)

STATE TRADING CORPORATION OF INDIA LTD. Appellant(s)

VERSUS

JINDAL STEEL AND POWER LIMITED & ORS. Respondent(s)

O R D E R

Leave granted.

(2) Being aggrieved by Order dated 04.06.2020 passed by the High Court of Delhi in FAO(OS) (COMM)No.61 of 2020 in and by which the High Court has directed the appointment of Arbitrator and other directions, the appellant-State Trading Corporation has filed the present appeal.

(3) The appellant--State Trading Corporation of India Ltd. (STC) has entered into an Associate Agreement with the first respondent-Jindal Steel & Power Limited (JSPL) for supply of 1.50 lakh MT of steel rails manufactured by the first respondent-M/s Jindal Steel & Power Ltd. (JSPL) to Iranian Islamic Republic Railways (RAI) valuing approximately Rs.819.49 crores under twelve shipments to Iranian Islamic Railways between October 2016 and November 2017. Clause 19 of the Agreement sets out the mechanism for resolution of the disputes under the aegis of Indian Council of Arbitration and the Rules thereon. The respondent No.1 executed a corporate guarantee in

favour of the appellant-STC for an amount of Rs.88.40 crores. The terms and conditions governing the Performance Bank Guarantees were mentioned therein. The bank guarantees were extended on various dates.

(4) Dispute arose between the parties and respondent No.1 filed a petition under Section 9 of the Arbitration and Conciliation Act in OMP(I)(Comm)No.89 of 2020 before the High Court of Delhi seeking direction to the appellant-STC not to invoke and encash the Performance Bank Guarantees and other directions. After hearing the parties, the learned Single Judge passed a detailed order dated 20.04.2020 rejecting the first prayer seeking release of Performance Bank Guarantees for Rs.81.94 crores and Rs.90,000/- respectively. Learned Single Judge further directed respondent No.1 to extend the Bank Guarantees. Accordingly, Performance Bank Guarantees were extended till 22.07.2020 in terms of the order dated 20.04.2020.

(5) Respondent No.1 challenged the order of the learned Single Judge before the Division Bench in FAO(OS) (Comm.) No.61/2020. Learned Division Bench of the Delhi High Court by the impugned order suo motu appointed the arbitrator, a retired Judge of the Delhi High Court.

(6) Challenging the impugned order and contending that suo motu appointment of the Arbitrator in the proceedings under Section 9 of the Act is contrary to the agreed Clause 19 of the Agreement between the parties, the appellant-STC has filed the appeal.

(7) We have heard Mr. Tarkeshwar Nath, learned counsel appearing for appellant-State Trading Corporation of India Ltd. and Mr. Mr. Gopal Jain, learned senior counsel appearing for the first respondent-Jindal Steel and Power Limited and perused the impugned order and other materials on record.

(8) Clause 19 of the agreement between both the parties provides a mechanism to settle the dispute arising between the parties by arbitrations in accordance with the Rules of Arbitration of the Indian Council of Arbitration. When the parties have agreed upon the procedure for appointment of arbitrator, ignoring the same, in the appeal arising out of the proceedings under Section 9 of the Act, the High Court, in our view, was not right in suo motu appointing an arbitrator. Therefore, the impugned order is liable to be set aside.

(9) Accordingly, the impugned order is set aside and the appeal is allowed.

(i) First respondent is at liberty to file necessary application before the Indian Council of Arbitration for initiation of the arbitration as prayed within seven days from today. At this stage, Mr. Gopal Jain, learned senior counsel appearing for the first respondent, has submitted that the first respondent has already paid the requisite fee before the ICA. If that be so, the same may be treated as the requisite fees as per the ICA Rules of Arbitration. The appellant-STC shall also deposit the fees as required under ICA Rules of Arbitration. ICA thereafter may proceed and take appropriate action in

accordance with ICA Rules of Arbitration.

(ii) Considering the facts and circumstances of the case, we direct the first respondent-Jindal Steel and Power Limited to renew the Performance Bank Guarantees for a further period of two months from 22.07.2020. If any further order is required, both the parties are at liberty to seek appropriate relief before the Arbitral Tribunal in accordance with ICA Rules of Arbitration.

(iii) Mr. Gopal Jain, learned senior counsel appearing for the first respondent, sought for direction to the arbitral Tribunal to expedite the hearing of the matter. As per Clause 19 of the Agreement, the parties are yet to approach the Indian Council of Arbitration. In such view of the matter, as and when Arbitral Tribunal is constituted, both the parties are at liberty to make a request to the Arbitral Tribunal for expeditious hearing of the matter.

.....J.
(R. BANUMATHI)

.....J.
(AJAY RASTOGI)

NEW DELHI,
JULY 14, 2020.

ITEM NO.301

Virtual Court 5

SECTION XIV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 7857/2020
(Arising out of impugned final judgment and order dated 04-06-2020
in FA0(OS)(COMM) No. 61/2020 passed by the High Court Of Delhi At
New Delhi)

STATE TRADING CORPORATION OF INDIA LTD.
VERSUS

Petitioner(s)

JINDAL STEEL AND POWER LIMITED & ORS.

Respondent(s)

(FOR ADMISSION and I.R. and IA No.55907/2020-EXEMPTION FROM FILING
C/C OF THE IMPUGNED JUDGMENT and IA No.55909/2020-APPLICATION FOR
EXEMPTION FROM FILING ORIGINAL VAKALATNAMA/OTHER DOCUMENT)

Date : 14-07-2020 This petition was called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE R. BANUMATHI
HON'BLE MR. JUSTICE AJAY RASTOGI

For Petitioner(s) Mr. Tarkeshwar Nath,Adv.
Mr. Rameshwar Prasad Goyal, AOR

For Respondent(s) Mr. Gopal Jain,Sr.Adv.
Mr. Saket Sikri,Adv.
Mr. Manish Kharbanda,Adv.
Ms. Nikitha Shenoy,Adv.
Ms. Gauri Rasgotra,Adv.
Mr. Sumit Attri,Adv.
Mr. George Varghese,Adv.
Mr. Siddharth Sharma,Adv.
For M/S. Cyril Amarchand Mangaldas Aor, AOR

UPON hearing the counsel the Court made the following
ORDER

The Court is convened through video conferencing.

Leave granted.

In terms of the signed non-reportable order, the appeal is
allowed.

Pending applications, if any, shall also stand disposed of.

(MAHABIR SINGH)
AR-cum-PS

(BEENA JOLLY)
BRANCH OFFICER

(Signed non-reportable order is placed on the file)