

(SHOW CAUSE NOTICE BEFORE ADMISSION)

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

THURSDAY, THE TWENTY SEVENTH DAY OF JUNE,
TWO THOUSAND AND TWENTY FOUR

:PRESENT:

THE HONOURABLE MS JUSTICE B S BHANUMATHI
INTERNATIONAL COMMERCIAL ARBITRATION ORIGINAL

APPLICATION No. 14 of 2024



Between:

BST(HK) LIMITED, Unit 3704, 37/F, AIA Tower, No. 183, Electric Road, North Point, Hong Kong, Represented by its authorised signatory Mr. Madala Srinivas

...Petitioner

AND

1. TUF Metallurgical Private Limited, TUF House, LSC No. 3, Shreshtha, ShreshthaVihar, Post Box No 9237, Delhi-110092.
2. Orca Logistics Pvt. Ltd, 9-7-40/7/2, Lakshmi Nagar Layout, Sivajipalem, Visakhapatnam, Andhra Pradesh.

...Respondents

WHEREAS the Petitioner above named through its Advocate Sri Sai Sanjay Suraneni presented this I.COMAOA, under Section 9 of the Arbitration and Conciliation Act, 1996, praying

- A. For an order and/or direction for attachment of 50,000 WMT of Iron Ore Fines of the 1st Respondent currently lying at the plot of Orca Logistics pvt Ltd., 9-7-40/7/2, Lakshmi Nagar Layout, Sivajipalem, Visakhapatnam, Andhra Pradesh (Respondent No.2).
- B. For an order and/or direction to the 1st Respondent to furnish security in the sums of US\$ 2,423,404.58. from the date of the

Petition till the date of the deposit of such sums with this Honble Court.

- C. Interim and ad interim reliefs in terms of prayer clauses A to D above
- D. For costs.

And whereas, the High Court, upon considering the I.COMAOA coming on for hearing, upon perusing the memorandum of grounds filed in support thereof and upon hearing the arguments of Sri Sai Sanjay Suraneni, Advocate for the Petitioner, made the following

ORDER:

“This petition is filed under Section 9 of the arbitration and conciliation Act, 1996 r/w Section 151 CPC, 1908 seeking the following relief:

- A. For an order and/or direction, order/directing attachment of the iron Ore belonging to the 1st respondent and presently lying at the plot of Orca Logistics Pvt.Ltd., 9-7-40/7/2, Lakshmi Nagar Layout, Sivajipalem Visakhapatnam, Andhra Pradesh (Respondent No.2). The market value of Iron Ore is in the region of US\$ 2,500.000 and consequently the petitioner seeks attachment of the entire quality of 50000 WMT of Iron Ore to secure its claim of US\$ 2,423,404.58.**
- B. For an order and/or direction to the 1st respondent to furnish security in the sum of US\$ 2,423,404.58 in such form as this Hon’ble Court deems fit and proper.**
- A. For an order and /or direction for attachment of 50,000 WMT of Iron Ore Fines of the 1st respondent currently lying at the plot of Orca Logistics Pvt. Ltd., 9-7-40/7/2, Lakshmi**

Nagar Layout, Sivajipalem, Visakhapatnam, Andhra Pradesh (Respondent No.2).

- B. For an order and/or direction to the 1st respondent to furnish security in the sums of US\$ 2,423,404.58 from the date of the deposit of such sums with this Hon'ble Court.**
- C. Interim and ad interim reliefs in terms of prayer clauses A to D above;**
- D. For costs.**
- E. For such further and other reliefs as this Hon'ble Court may deem fit and proper in the nature and circumstances of the case.**

The case of the petitioner is briefly as follows:

- A. The petitioner entered into contract with 1st respondent on 19.12.2023 as per which the iron ore fines to be supplied should have chemical composition with Fe @ 56.00% and accordingly the rate was fixed and the contract is further subject to renegotiation of price in case if it falls short of 54%. The buyer has to pay, as per the contract, 96% of the agreed price when the material is loaded if it confirms to the requirement and the balance of 4% of the price shall be paid after discharge upon submission of documents, subject to confirmation of the agreed chemical composition and in case of a change, it is again subject to renegotiation as noted above.**
- B. The petitioner paid 96% of the agreed price at the time of loading since, as per the report, the material was in confirmation with the required chemical composition, but, when the material was unloaded and tested, Fe was reported to be 52.21% and as such it was retested by the third party in furtherance of the negotiation and again the same also fell short of the requirement as the average rate is reported to be 52.60% and accordingly both the parties entered into negotiation and addendum dated 06.03.2024 was signed by the 1st respondent as per which the price was negotiated to be paid at the final price based on prevailing import**

market rate for Fe 53/52 of Indian origin at the time a report of Bureau Veritas (BV) is out. Accordingly, the 1st respondent is due to the petitioner the amount of claim for USD 2,423,404.58.

C. The petitioner further claims that the material purchased by the petitioner was sold to third party at the same rate and thereafter the petitioner raised the claim from the 1st respondent and an e-mail correspondence was also made on 25.05.2024 and again e-mail was sent on 27.05.2024 due to some mistake in the description in the correspondence dated 25.05.2024 and that the 1st respondent replied to the petitioner through e-mails remarking that the 1st respondent referred to settle the matter amicably, but no payment has been made so far. Therefore, the petitioner sought the above reliefs.

Heard the learned counsel for the petitioner.

Perused the record. All the above submissions are supported by the documents enclosed to the petition.

The learned counsel for the petitioner submitted that unless order of attachment is passed, the claim of the petitioner cannot be realised, if the material sought to be attached is removed before the adjudication of the claim by the arbitrator as per the clause in the agreement.

In view of the *prima facie* case in favour of the petitioner for directing conditional order of attachment, this Court deems it fit to order accordingly.

Issue notice to 1st respondent to furnish security in favour of the petitioner for sum of USD 2,423,404.58 within 48 hours of receipt of the notice failing which 50,000 WMT of Iron Ore Fines of the 1st respondent currently lying at the plot of Orca Logistics Pvt. Ltd., 9-7-40/7/2, Lakshmi Nagar Layout, Sivajipalem, Visakhapatnam, Andhra Pradesh be attached.

Issue Notice the respondents.

The learned counsel for the petitioner is permitted to take out personal service of notice to the respondents through registered post with acknowledgment due and e-mail as well and file proof thereof.

List on 18.07.2024.”

Therefore, You viz:

1. TUF Metallurgical Private Limited, TUF House, LSC No. 3, Shreshtha, Shreshtha Vihar, Post Box No 9237, Delhi-110092.
2. Orca Logistics Pvt. Ltd, 9-7-40/7/2, Lakshmi Nagar Layout, Sivajipalem, Visakhapatnam, Andhra Pradesh.

be and hereby are directed to show cause, as to why this International Commercial Arbitration Original Application should not be admitted, either appearing in person or through Advocate duly instructed on 18.07.2024, to which date the case stands posted for hearing, failing wherein the said case will be heard and determined ex-parte.

**SD/- P. VENKATA RAMANA
JOINT REGISTRAR**

//TRUE COPY//



SECTION OFFICER

To,

1. **The Registrar (Judicial), High Court of Andhra Pradesh at Amaravati**
2. TUF Metallurgical Private Limited, TUF House, LSC No. 3, Shreshtha, Shreshtha Vihar, Post Box No 9237, Delhi-110092.
3. Orca Logistics Pvt. Ltd, 9-7-40/7/2, Lakshmi Nagar Layout, Sivajipalem, Visakhapatnam, Andhra Pradesh. (**Addresses 2 & 3 by Speed Post/ email/whatsapp**)
4. One CC to Sri Sai Sanjay Suraneni, Advocate [OPUC]
5. The Section officer, OS Section, High Court of Andhra Pradesh
6. One spare copy

cvss

HIGH COURT

BSB,J

DATED:27/06/2024

LIST ON 18.07.2024.

NOTICE BEFORE ADMISSION

ICOMAOA.No.14 of 2024

DIRECTION

