HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

MAIN CASE No: ICOMAOA.No.14 of 2024

PROCEEDING SHEET

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<tr><td>17.</td><td>10.07.2025</td><td>

SV,J

Heard Sri D. Prudhvi Teja, learned counsel representing Sri Sai Sanjay Suraneni, learned counsel for the petitioner; Sri Dil Jit Singh Ahulwalia, learned counsel for the Respondent No.1 who appeared through virtual mode; and Sri Ch. Karthik, learned counsel for the Respondent No.1.

On 26.06.2025, Sri Dil Jit Singh Ahulwalia, learned counsel for the Respondent No.1 filed a memorandum on behalf of the Respondent No.1 into the Court, after serving the copy to the petitioner, wherein, he requested the following reliefs:

"1. Consequent to the interim order dated 27.06.2024 passed by this Hon'ble Court attaching the Cargo of 1st respondent at Visakhapatnam Port, at a stage prior to Arbitration two adverse consequences, as under, accrue for the parties:

1.1. Denuding of the value of the Cargo due to climatic conditions resulting in reduction of the Ferrous content of the iron ore ("Fe content").

1.2. Heavy costs of storage/demurrage of Cargo being incurred.

2. Ex consequenti, losses accrued qua the Cargo are INR 11,30,78,623.00. (Tabulation attached)

3. Vide Para 4 of its Reply in IA 2 of 2025, Petitioner had fairly conceded that "it is willing to consent to alternative

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		security being furnished by the Respondent No.1 in one of the following forms: (a) Cash deposit with the Registry of this Hon'ble Court." 4. In view of the above, without prejudice, 1st respondent agrees to the above and prays that it be permitted to sell the Cargo and the cash generated thereof be deposited with the Registry of this Hon'ble Court in an interest bearing FD. 5. The course at para 3 above is supported by the following principles of CPC: 5.1. O.XXXVIII R.11A stipulates that the provisions of attachment made in execution of a decree shall apply mutatis mutandis to attachments made before judgment which continue after judgment. 5.2. O.XXI R.43 stipulates that when movable property other than agricultural produce which is in the possession of the judgment debtor is attached, then "…when the property seized is subject to speedy and natural decay, or when the expense of keeping it in custody is likely to exceed its value, the attaching officer may sell it at once. 5.3. Principles of CPC serving as guidance in proceedings u/s 9 of the Arbitration Act, 1996, the course at para 1 may be adopted by this Hou'ble Court. 6. Alternatively, since the attachment has been directed at the behest of the Petitioner, all losses at para 2 supra be directed to be on its account. 7. Be that as it may be, two supervening circumstances have arisen as under: 7.1. On 28.04.2025, SIAC has passed the Award in favour of the Petitioner. 7.2. Petitioner has the remedy in law to get the same	**Contd..**

executed as per law.

8. Undoubtedly, unless the execution of the award is stayed, the passage of the award does not ipso facto lead to vacation of the interim order. However, sizable working capital of the 1st respondent having been attached, its adversely affecting its business as a going concern.
9. Without prejudice to its rights to challenge the execution of the award, 1st respondent reiterates its earlier offer to give a corporate guarantee for USD 2,423,404.58 to the Petitioner through TUF Commodities DMCC, Dubai vide affidavit dated 15.04.2025. This alternative may kindly be considered and the Cargo be released".

In reply to the memorandum, Sri D. Prudhvi Teja, learned counsel representing Sri Sai Sanjay Suraneni, learned counsel for the petitioner filed a reply today i.e., on 10.07.2025 said to be signed by the petitioner who is a authorized signatory, wherein, he stated as follows:

1. "I am the authorized signatory of the Petitioner pursuant to a board resolution dated 04.06.2024 issued in my favour. I am filing this Reply (the 'Reply') is filed in response to the Memorandum of Arguments dated 26.06.2025 (the 'Memo').
2. At the outset, nothing set out in the Memo should be deemed to have been accepted by the Petitioner, unless specifically in this Reply.
3. Without prejudice to its position generally, the Petitioner submits that in principle it has no objection if the cargo which is presently lying under attachment at Vishakapatnam Port is sold by the 1st Respondent subject to the following:

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		(a) The 1st Respondent must disclose, in advance to concluding the sale, the identity of the party to which it intends to sell the cargo and the price at which it intends to sell the cargo; The petitioner reserves its right to withdraw its consent for the sale of the cargo; and (b) The 1st Respondent must give the Petitioner and/or its nominees a right to match the price at which the Respondent intends to sell the cargo. (c) The 1st Respondent must undertake that the proceeds realized from sale of the cargo will be deposited with the Registry of this Hon'ble Court by the purchaser and earmarked towards satisfaction of the arbitral award passed in the Petitioner's favour; and (d) The Directors of 1st Respondent must personally undertake to make good any shortfall between the amount realized from sale of cargo and the total sum awarded in favour of the Petitioner under the arbitral award.; and (e) The Respondent must bear all the costs with respect to the sale of the cargo – including but not limited to all bank fees, interest, taxes, duties, port fees, transport, survey charges etc. (f) The Respondent must undertake that title and/or possession of the cargo shall be transferred to the purchaser only after the sale proceeds are deposited with this Hon'ble Court. (g) If the sale proceeds are realized in USD currency, if possible, they should be retained by the Registry of this Hon'ble Court in a USD currency bank account; and	**Contd..**

4. The offer of a corporate guarantee made by the 1st Respondent is not acceptable. Not only is TUF Commodities DMCC, Dubai (‘TUF DMCC’) located outside the jurisdiction of this Hon’ble Court but in addition, TUF DMCC is not party to the arbitration and arbitral award passed in the Petitioner’s favour – this may result in complications if/ when the Petitioner seeks to enforce/ execute the arbitral award against TUF DMCC.

5. By way of abundant caution:

(a) The Petitioner denies that the value of the cargo has denuded, or that it is denuded to the extent claimed by the 1st Respondent. The cargo is not a perishable commodity – it is iron ore. The value of iron ore is primarily dependent on the ‘Fe Content’ of the iron ore. The Fe content of the cargo does not decrease merely because the cargo is lying in a storage yard.

(b) As far as storage costs are concerned, the 1st Respondent had the option of lifting the attachment by furnishing alternate security or by applying for judicial sale of the cargo. The 1st Respondent did neither but chose instead to let the cargo remain standing at the storage yard. Thus, storage costs which have allegedly accrued on the cargo are solely attributable to the 1st Respondent and consequently, the 1st Respondent alone is liable for these costs.

(c) For the sake of good order, the Petitioner denies that the 1st Respondent has suffered losses aggregating ₹11,30,78,623 (or any part thereof).

6. This present affidavit is being filed without prejudice to the Petitioner’s rights and contentions”.

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Heard both the learned counsel.

There is a consensus between both the learned counsel to sell the Cargo which is under attachment and the cash generated thereof, if it is in the U.S. dollars be deposited in U.S. dollars or if it is in Indian currency be deposited in Indian currency to the account of the Registrar (Judicial), High Court of Andhra Pradesh, in the form of FDR.

The learned counsel for the petitioner agrees to withdraw the following sentence in reply memo, "however, the petitioner reserves its right to withdraw for the sale of Cargo" and same is accepted by the learned counsel for the respondent No.1.

The Registrar (Judicial) is directed to keep the deposited amount. The Registrar (Judicial) is further directed that if the amount receives in U.S. Dollar keep it in U.S. dollar account and if the amount receives in Indian currency, keep it in the Indian currency in the account of the Registrar (Judicial) in the form of FDR, so that it accrues interest.

In view of the above consensus among both the learned counsel, the respondent No.1 is directed to sell the Cargo with an undertaking to deposit entire sale proceeds to the account of the Registrar (Judicial) of the High Court of Andhra Pradesh at Amaravati.

It is also made clear that the learned counsel for the petitioner is not accepted for corporate guarantee.

SV,J

KNN