

HIGH COURT OF CHHATTISGARH, BILASPUR

Arbitration Appeal No.16 of 2022

Order reserved on: 14-7-2022

Order delivered on: 3-8-2022

{Arising out of order dated 22-3-2022 passed in Arb. M.J.C.No.14/2020 by the Judge, Commercial Court (District Level), Nava Raipur, Chhattisgarh}

South Eastern Coalfields Limited, Seepath Road, Bilaspur (C.G.)
Represented through

1. The Chairman and Managing Director, SECL, Seepath Road, Bilaspur (C.G.)
2. The General Manager, Kusmunda Area, PO Kusmunda, Distt. Korba (C.G.)
3. The Staff Officer (Mining), SECL, Kusmunda Area, PO Kusmunda, Distt. Korba (C.G.)

---- Appellant

Versus

M/s Sri Balaji Metals & Minerals Pvt. Ltd., Through Raghav Lakhotia,
Director, 23-A, Netaji Subhas Road, 3rd Floor, Kolkata (WB)

---- Respondent

For Appellant: Mr. Abhishek Sinha, Senior Advocate with Mr. Pankaj
Singh, Advocate.
For Respondent: Mr. Ankit Pandey, Advocate.

Hon'ble Shri Sanjay K. Agrawal and
Hon'ble Shri Sanjay S. Agrawal, JJ.

C.A.V. Order

Sanjay K. Agrawal, J.

1. Heard on I.A.No.1/2022, application for grant of interim relief.
2. This appeal under Section 13 of the Commercial Courts Act, 2015 read with Section 37 of the Arbitration and Conciliation Act, 1996 (for short, 'the AC Act') has been preferred by the appellant – SECL questioning the order passed by the Judge, Commercial Court (District

Level), Nava Raipur, Chhattisgarh, dated 22-3-2022 in Arbitration M.J.C.No.14/2020, by which the appellant's application under Section 34 of the AC Act questioning the award dated 28-1-2020 passed by the Arbitral Tribunal awarding a sum of ₹ 10,45,65,360/- along with interest and cost of litigation in favour of the respondent herein, has been rejected finding no merit.

3. The above stated appeal has been admitted for hearing by this Court on 13-5-2022 and notice was issued on the application for interim relief pursuant to which reply has been filed.
4. Mr. Abhishek Sinha, learned Senior Counsel appearing for the appellant, would submit that the appellant had awarded the work of "Hiring of Heavy Earth Moving Machinery for Over Burden removal at Kusmunda Open Cast Mines of SECL Kusmunda Area" to the respondent herein and total awarded quantity was 76,54,000 Cubic Meters at the rate of ₹ 65.55 per Cubic Meter. Total value of the work was ₹ 50,17,19,700/- and time frame for completion of work was 36 months (27-8-2007 to 26-8-2010) with stipulation of quantities to be executed each day and each year. He would further submit that for the reasons solely attributable to the respondent, the respondent failed to adhere to the Schedule of Work leading to repeated agitations from the appellant in the form of various letters written over a span of time. The Schedule of Work was time sensitive as the mining operations of the appellant were dependent upon the performance of the respondent. However, the respondent failed to perform the work and stopped / abandoned the work on 5-8-2009 pursuant to which the respondent's contract was terminated by order dated 30-8-2009 in terms of clause 9.2 of the Conditions of Contract

and the unexecuted work was to be executed through a third party at the risk and cost of the respondent and after a limited tender process, the unexecuted work was allotted to a third party and demand / recovery notice was issued to the respondent on 16-11-2011 for an amount of ₹ 4,76,29,053/-. Mr. Sinha, learned Senior Counsel, would also submit that the learned Arbitral Tribunal while adjudicating upon the claim of the respondent, allowed the respondent's claim to the extent of ₹ 10,45,65,360/- + interest and set aside the termination order dated 30-8-2009. Against the said award, application under Section 34 of the AC Act was filed by the appellant herein which was rejected by order dated 22-3-2022. Mr. Sinha, learned Senior Counsel, would also submit that the award dated 28-1-2020 suffers from patent illegality in terms of Section 34(2-A) of the AC Act and is in contravention / conflict with the fundamental policy of the Indian law and basic notions of justice. Further relying upon Section 34(2)(a)(iv) of the AC Act, he would submit that the impugned award is liable to be set aside on the ground that the same adjudicates dispute(s) which is not contemplated by or not falling within the terms of the submission to arbitration and contains decisions on matters beyond the scope of the submission to arbitration. Mr. Sinha, learned Senior Counsel, would also submit that the learned Commercial Court (District Level) only held that the termination of the respondent's contract was not in accordance with law and thereafter further held that the grounds not taken before the Arbitral Tribunal cannot be taken and the Commercial Court (District Level) has exercised the jurisdiction under Section 34 of the AC Act, as the challenge of the appellant to the award was repelled primarily on the ground that the appellant has failed to plead

grounds in terms of Section 34 of the AC Act in support of its contention and there appears to be no perversity / illegality in the finding of the learned Arbitral Tribunal that the termination was illegal for want of non-issuance of termination notice. He would also submit that the learned Commercial Court not only chose to selectively read the pleadings of the appellant, but also ignored the settled principle that a point of law can be raised at any stage of judicial adjudication in light of the recent decision of the Supreme Court in the matter of **State of Chhattisgarh and another v. Sal Udyog Private Limited**¹. Mr. Sinha, learned Senior Counsel, would contend that this Court has discretion to stay the operation of the award dated 28-1-2020 under Section 36(3) of the AC Act unconditionally or on furnishing of security by the appellant on being satisfied that the award suffers from patent illegality and is in conflict with the fundamental policy of the Indian law and the basic notions of justice relying upon the judgment of the Supreme Court in the matter of **Sihor Nagar Palika Bureau v. Bhabhlubhai Virabhai & Co.**² and **Malwa Strips Private Limited v. Jyoti Limited**³, as under Section 36 (3) of the AC Act there is no mandatory requirement that security to be furnished for stay of an award would only be in monetary terms and it is the sole discretion of the Courts while considering the application for grant of stay. As such, the impugned award deserves to be stayed and the respondent be restrained from executing the award till the final disposal of this appeal.

5. Mr. Ankit Pandey, learned counsel appearing for the respondent, would submit that the AC Act is a self-contained Code and after amendment in the year 2015, as per the judgments of the Supreme

1 (2022) 2 SCC 275

2 (2005) 4 SCC 1

3 (2009) 2 SCC 426

Court, the Courts should be reluctant in interfering with the arbitral award. He would further submit that the appellant has not made out any exceptional case for grant of money decree particularly, in view of the fact that the Arbitral Tribunal has specifically held that the respondent has abandoned the work out of disgust and harassment because of non-cooperation by the appellant herein, as the Arbitral Tribunal as well as the Commercial Court had already held that the termination of contract was not in accordance with law. He would rely upon the decision of the Supreme Court in the matter of Ramachandra Narayan Nayak v. Karnataka Neeravari Nigam Limited and others⁴ in which it has been held that where agreement provides for issuance of show-cause notice, as per terms of contract, before termination of a contract, compliance with said condition is mandatory since it results in serious civil consequences like forfeiture of earnest money deposit, security deposit, etc. and termination without such show cause notice is arbitrary and unreasonable. Relying upon the decision of the Supreme Court in the matter of Punjab State Civil Supplies Corporation Ltd. and another v. Ramesh Kumar and Company and others⁵, it has been submitted by Mr. Ankit Pandey, learned counsel for the respondent, that considering the appeal under Section 37 of the AC Act, this Court has to consider whether the District Judge had acted contrary to the provisions of the AC Act in rejecting the challenge to the arbitral award. As such, the application for grant of stay deserves to be rejected.

6. We have considered the rival submissions made on behalf of the parties and went through the record with utmost circumspection.

4 (2013) 15 SCC 140

5 2021 SCC OnLine SC 1056

7. The learned Arbitrator has duly considered the pleadings of the parties, framed issues and raised claims and counter-claims of the parties with reasons, as such, the award is a speaking award.
8. The learned Arbitral Tribunal has clearly recorded a finding that termination of the respondent's contract was not in accordance with the terms of the contract and the learned Commercial Court also while rejecting the application under Section 34 of the AC Act, in paragraph 20, has reached to the conclusion that the order of termination of the respondent's contract dated 30-8-2009 issued by the appellant is illegal, as before termination of contract, the appellant SECL was required to issue notice to that effect and after expiry of specific period, the contract could have been terminated, but that has not been done. As such, the learned Arbitral Tribunal as well as the learned Commercial Court came to the conclusion that the contract was not terminated in accordance with the terms of the contract after giving notice to the respondent herein. Apart from that, while deciding the application under Section 34 of the AC Act, the learned Commercial Court only considered and held that the termination of contract is not in accordance with the terms of the contract and thereby rejected the application under Section 34 of the AC Act. Other grounds raised by the appellant herein were not considered at all holding that the grounds have not been raised specifically which ought to have been considered in view of Section 34 of the AC Act and in view of the decision of the Supreme Court in Sal Udyog Private Limited's case (supra), which the Commercial Court did not venture to consider.
9. The proviso to sub-section (3) of Section 36 of the AC Act makes it clear that the court shall, while considering the application for grant of

stay in the case of an arbitral award for payment of money, have due regard to the provisions for grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908. As such, the proviso is a guiding principle for the courts considering the stay of arbitral award.

10. Order 41 Rule 5(1) of the CPC provides for discretion to stay the execution of a decree for sufficient cause. Power to exercise such discretion is subject to the Court having satisfied the conditions laid down in Order 41 Rule 5(3) of the CPC.

11. In the matter of **Pam Developments Private Limited v. State of West Bengal**⁶, it has been held by their Lordships of the Supreme Court that while considering an application for stay filed along with or after filing of objection under Section 34 of the AC Act, if stay is to be granted then it shall be subject to such conditions as may be deemed fit. Section 36 of the AC Act also mandates recording of reasons for such stay being granted.

12. In view of the aforesaid discussion, we are of the considered view that the respondent should be secured for the whole of the amount awarded by the Arbitral Tribunal along with interest. Accordingly, we direct that the appellant shall deposit 50% of the arbitral award (including interest calculated till July, 2022) by account cheque / demand draft to the satisfaction of the Additional Registrar (Judicial) of this Court. Upon such deposit being made, the Additional Registrar (Judicial) is directed to make a fixed deposit of the said amount with any nationalised bank and keep the same renewed till the disposal of this appeal or until further orders of this Court. Remaining 50% of the

awarded amount shall be secured by way of bank guarantee of a nationalised bank by the appellant to the satisfaction of the Additional Registrar (Judicial). The bank guarantee is to be renewed by AR(J) one month prior to its expiry and kept alive till the disposal of this appeal or until further orders in relation to same, whichever is earlier. The aforesaid exercise has to be completed within a period of three weeks from the date of this order. In the event security, as directed above, is furnished, there shall be stay of execution of the award till the disposal of this appeal. I.A.No.1/2022 is allowed in aforesaid terms.

13. List the matter for final hearing in the week commencing from 22nd August, 2022.

14. Paper book has been filed. Parties may verify and file additional documents, if any.

Sd/-
(Sanjay K. Agrawal)
Judge

Sd/-
(Sanjay S. Agrawal)
Judge