

OCD-4

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE
(COMMERCIAL DIVISION)
IA NO. GA 5 OF 2022
IN
CS 182 OF 2021

IN THE MATTER OF :
NARSINGH ISPAT LIMITED
VS
JWALA COKE INDUSTRIES

BEFORE:

The Hon'ble JUSTICE ARINDAM MUKHERJEE

Date : 31st January, 2023.

Appearance:

Mr. Reetobroto Mitra, Adv.

Mr. Anirban Kar, Adv.

Mr. M.A. Elahi, Adv.

Ms. Snigdha Das, Adv.

Ms. Sushmita Bhattacharjee, Adv.

For plaintiff

Mr. Tapas Kr. Banerjee, Adv.

Ms. Suparna Mukherjee, Adv.

Mr. Sarbajit Mukherjee, Adv.

Mr. Shayak Mitra, Adv.

Mr. Swapan Kr. Bhattacharya, Adv.

Mr. Triptimoy Talukdar, Adv.

Mr. Abharaj Tarafdar, Adv.

For defendant

The Court:- This is an application by the plaintiff, inter alia, directing the respondent to deposit a sum of Rs. 2,06,16,442/- with the Registrar, Original Side of this Court. The premise on which this application has been made is an order passed by an Hon'ble Division Bench of this Court on 22nd December, 2021 in APOT No. 213 of 2021. The said appeal was preferred by the

plaintiff/petitioner challenging the judgment and order dated 14th December, 2021 passed by the learned Single Judge in the plaintiff's injunction application being GA 1 of 2021 filed in the suit by which the previous order dated 16th September, 2021 was varied. The portion of the order dated 22nd December, 2021 which requires immediate consideration for adjudicating of this application is as follows:-

“We partly affirm the impugned order of the learned single judge dated 14th December, 2021 vacating the order of the injunction made on 16th September, 2021.

We direct that at all times the respondent shall have set apart in their stock 1077 metric tons of LAM Coke.

At any time, the respondent requires that quantity they will be free to take it away but replace it by the same quantity, within a week.

The respondent shall supply a statement of this stock retained by them in terms of this order every fortnight to the advocate-on-record for the appellant. This interim order will continue till 26th February, 2022 or until further order by the learned trial judge.”

The plaintiff/petitioner says that the defendant has stopped providing the stock statement though obliged to do so in terms of the order dated 22nd

December, 2022. Furthermore, from the stock statement supplied by the defendant it appeared to the plaintiff/petitioner that the defendant/respondent instead of setting apart 1077 MT of LAM Coke has set apart Hard Coke.

The plaintiff/petitioner further says that LAM Coke is Low Ash Metallurgical Coke. The specification of LAM Coke will appear from the purchase order issued by the plaintiff to the defendant. The specification of LAM Coke including the ash content and the other mineral content as also the size have been clearly specified in the purchase order.

The plaintiff/petitioner has also produced a literature with a copy to the defendant to demonstrate the specification of industrial coke as per Bureau of Indian Standards (BIS).

Referring to an amendment no.1 of June, 2011, the plaintiff/petitioner says that LAM Coke includes blast furnace coke (BFC) and foundry coke (FC) having ash content less than 15%. Co-relating this amendment with the purchase order, the plaintiff/petitioner says that the ash content in the purchase order is $12.5\% \pm 1\%$.

In this background, the plaintiff says that the defendant is in involved circumstances and, as such, should be directed to furnish security.

On behalf of the defendant, it is submitted that the defendant all along in compliance with the order dated 22nd December, 2021 and maintained a stock of 1077 MT of LAM Coke. The plaintiff never challenged the stock statement so supplied including the specification of the coal set apart in terms of the order

dated 22nd December, 2022. The submission now made by the plaintiff as to hard coke and LAM Coke is not spelt out in the application.

According to the defendant due to inadvertence the entire stocks statement had been furnished to the plaintiff. LAM Coke includes Furnace coke and Foundry coke. Adequate quantity of such coke was in the defendant's stock. Thus it cannot be said that the defendant did not comply with the order dated 22nd December, 2022 or is in involved circumstances.

Referring to the literature, the defendant says that there are only four broad categories of coke which are blast furnace coke (BFC), foundry coke (FC), coke for gas making (GC), coke for ferro-alloys industry (FAC), there is no coke otherwise specified as LAM Coke even according to the literature produced by the plaintiff.

The defendant says that from the stock statement it will appear that FC was in adequate quantity much in excess of 1077 MT in the stock of the defendant. The purchase order of the plaintiff, according to the defendant, speaks of FC and the literature also includes FC in LAM Coke. There is, as such, no failure on the part of the defendant in setting apart LAM Coke as ordered by the Hon'ble Division Bench on 22nd December, 2021.

Responding to the submissions made by the defendant, it is submitted by the plaintiff that, the ash content in BFC and FC has to be less than 15%. The industrial coke specification referred to by the defendant clearly shows that the ash content in BFC and FC is more than permitted 15%. Thus BFC and FC with

ash content above 15% cannot qualify as LAM Coke. 1077 MT whereof has been directed to set apart by the Appeal Court. The plaintiff also disputes the submission made by the defendant that the challenge to the specification of coke in the stock statement is not borne out from the application.

After hearing the parties and considering the materials on record as also the literature produced by the plaintiff, I prima facie find that LAM Coke includes BFC and FC with ash content less than 15% as per BIS Literature.

The issue as to classification of coal as per its composition and size, is a very technical one, which requires detail consideration. Unless this aspect is considered it will not be possible for the Court to arrive at a conclusion as to whether there has been a breach by the defendant and the entitlement of the plaintiff as to money security. This can be more effectively done if the defendant is directed to file an affidavit stating therein BFC and FC in their stock which has ash content less than 15% and qualifies as LAM Coke. The affidavit shall also specify as to whether 95% of such BFC or FC having less than 15% ash content has been set apart in the stock of the defendant and the manner in which the same can be segregated and identified. Let this affidavit be filed by 15th February, 2023.

Let this matter appear in the list on 21st February, 2023.

(ARINDAM MUKHERJEE, J.)

Sb/