

ODC-14

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE
(COMMERCIAL DIVISION)

IA NO. GA 5 OF 2022
CS 182 OF 2021
IN THE MATTER OF :
NARSINGH ISPAT LIMITED
VS
JWALA COKE INDUSTRIES

BEFORE:

The Hon'ble JUSTICE ARINDAM MUKHERJEE

Date : 28th February, 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 Banerjee, Adv.

Ms. Suparna Mukherjee, Adv.

Mr. Sarbajit Mukherjee, Adv.

Mr. Shayak Mitra, Adv.

Mr. Triptimoy Talukdar, Adv.

For defendant

The Court:- GA 5 of 2022 is an application by the plaintiff, inter alia, directing the defendant/respondent to secure a sum of Rs.2,06,16,442/- with the Registrar, Original Side of this Court. The foundation of this application is based on an order passed by the Hon'ble Division Bench dated 22nd December, 2021 in

APOT 215 of 2021 (Narsingh Ispat Ltd. Vs. Jwala Coke Industries). By the said order the Hon'ble Division Bench had passed the following directions :

“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.

We make it absolutely clear that all issues involved in the suit and in the interlocutory application and the application for vacating the interim order are kept open to be decided by the learned trial judge.

The appeal (APOT No.215 of 2021) and the connected stay application (IA GA No.1 of 2021) are disposed of accordingly.”

The plaintiff says that the defendant after the initial period for a particular time period did not furnish the stocks statement and again resumed the same after the application was made. Even in the stocks statement which were furnished there was no mention of LAM (Low Ash Metallurgical) Coke as directed by the Appeal Court. The statement only indicated hard coke. Hard coke,

according to the plaintiff, does not qualify as LAM coke unless the ash content is less than 15%. The plaintiff on a previous occasion by showing public documents has demonstrated the ash contents in coke for the same to qualify as LAM Coke. It appears therefrom the ash content has to be less than 15%. The plaintiff shows that since the defendant has failed to comply with the order of the Hon'ble Division as far as maintaining a balance stock of 1077 MT LAM coke, the defendant should be directed to furnish the security to the tune of the price of LAM Coke at the present market value which according to the plaintiff at the time of making the application was Rs. 2,06,16,442 /-.

The defendant on the other hand says that there may have been a slip in between to furnish the stocks statement in terms of the order of the Appeal Court dated 22nd December, 2021 but they have all along maintained a stock of 1077 MT of LAM coke. The defendant also says that hard coke includes LAM coke wherein the ash content is less than even according to the documents relied upon by the plaintiff 15% and as such there was no default on the part of the defendant. The prayer for security, according to the defendant is beyond the scope of this suit and cannot be granted in this application. That apart in any event the plaintiff has not disputed the quality of coke set apart by the defendant in terms of the Appeal Court's order.

The Appeal Court has not mentioned about the ash content. The plaintiff is, therefore, seeking modification and/or clarification of the order of the Appeal Court.

The submissions made by the defendant are disputed by the plaintiff. The plaintiff in reply says that the Appeal Court has directed the trial Court to decide

the issues afresh and in details. The trial Court is, therefore, authorised to look into this issue instead of parties going before the Appeal Court once again for clarification.

After hearing the parties at length and considering the materials on record, I find that this application can be disposed of by directing the defendant/respondent to set apart in their stock 1077 MT of LAM coke and supply a statement of such stock retained by the defendant on a fortnightly basis as directed by the Appeal Court in its order dated 22nd December, 2021. The stocks statement to be furnished on fortnightly basis by the defendant shall specify the weight of LAM Coke in metric tons, the ash content in such coke and at which place such stock is retained and/or set apart. A responsible Officer of the defendant/respondent shall put his seal and signature in the stocks statement to certify its correctness and then be sent the same to the plaintiff. The other directions given by the Appeal Court shall continue.

This arrangement shall continue till the disposal of GA 1 of 2021 or until further orders whichever is earlier.

GA 5 of 2022 is accordingly disposed of.

(ARINDAM MUKHERJEE, J.)