

ODC-7 to 16

IN THE HIGH COURT AT CALCUTTA  
Ordinary Original Civil Jurisdiction  
ORIGINAL SIDE  
[COMMERCIAL DIVISION]

IA No. GA/1/2021  
In  
AP/862/2012

INDIAN OIL CORPORATION LTD.  
-VS-  
M/S. BRIDGE AND ROOF COMPANY (INDIA) LTD.

And

IA No. GA/1/2021  
In  
AP/863/2012

INDIAN OIL CORPORATION LTD.  
-VS-  
M/S. BRIDGE AND ROOF COMPANY (INDIA) LTD.

And

IA No. GA/1/2021  
In  
AP/865/2012

INDIAN OIL CORPORATION LTD.  
-VS-  
M/S. BRIDGE AND ROOF COMPANY (INDIA) LTD.

And

IA No. GA/1/2021  
In  
AP/872/2012

INDIAN OIL CORPORATION LTD.  
-VS-  
M/S. BRIDGE AND ROOF COMPANY (INDIA) LTD.

And

IA No. GA/1/2021  
In  
AP/873/2012

INDIAN OIL CORPORATION LTD.  
-VS-  
M/S. BRIDGE AND ROOF COMPANY (INDIA) LTD.

And

IA No. GA/1/2021

In

AP/874/2012

INDIAN OIL CORPORATION LTD.

-VS-

M/S. BRIDGE AND ROOF COMPANY (INDIA) LTD.

And

IA No. GA/1/2021

In

AP/1060/2012

INDIAN OIL CORPORATION LTD.

-VS-

M/S. BRIDGE AND ROOF COMPANY (INDIA) LTD.

And

IA No. GA/1/2021

In

AP/1061/2012

INDIAN OIL CORPORATION LTD.

-VS-

M/S. BRIDGE AND ROOF COMPANY (INDIA) LTD.

And

IA No. GA/1/2021

In

AP/1062/2012

INDIAN OIL CORPORATION LTD.

-VS-

M/S. BRIDGE AND ROOF COMPANY (INDIA) LTD.

And

IA No. GA/1/2021

In

AP/1064/2012

INDIAN OIL CORPORATION LTD.

-VS-

M/S. BRIDGE AND ROOF COMPANY (INDIA) LTD.

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 5<sup>th</sup> October, 2021.

[Via video conference]

Appearance:

*Mr. Tilak Bose, Sr. Adv.*

*Ms. Vineeta Meharia, Adv.*

*Mr. Amit Meharia, Adv.*

*Mr. Santanu Chatterjee, Adv.*

*Ms. Madhurima Halder, Adv.*

*Ms. Paramita Banerjee, Adv.*

*Ms. Amrita Das, Adv.*

*Ms. Subika Paul, Adv.*

*... for the petitioner*

*Mr. Utpal Bose, Sr. Adv.*

*Ms. Hashnuhana Chakraborty, Adv.*

*Ms. Neelina Chatterjee, Adv.*

*... for the respondent*

The Court : The Court intends to pass a single order in ten applications filed by the petitioner for referring the disputes between the parties to the Administrative Mechanism for Resolution of Central Public Sector Enterprises Disputes (AMRCD) in accordance with the Circulars and Office Memoranda issued by the Government of India on several dates including on 22<sup>nd</sup> May, 2018. The ten applications arise out of ten Awards passed by a learned Sole Arbitrator under the Permanent Machinery of Arbitration Framework. Being aggrieved by the Awards, petitioner filed applications for setting aside of the Awards under Section 34 of The Arbitration and Conciliation Act, 1996 which are presently pending adjudication before the court. Several applications were also filed by the parties for interim relief under Section 9 of the Act which are also pending before the court.

The immediate reason for filing the present applications is an Office Memorandum dated 22<sup>nd</sup> May, 2018 pertaining to settlement of

commercial disputes between the Central Public Sector Enterprises and Government Departments. Clause 4A (i) of the Office Memorandum provides that at the first level, commercial disputes of the nature referred to in the Memorandum shall be referred to a Committee comprising of Secretaries of the Administrative Ministries / Departments to which the disputing parties belong and Secretary-Legal Affairs.

The dispute between the parties relates to renewal of bank guarantees given by the respondent. It appears from several orders of the court from 21<sup>st</sup> June, 2013 to 10<sup>th</sup> June, 2021 that the bank guarantees have been kept alive and are on subsistence. Learned counsel appearing for the petitioner places emphasis on the aforesaid fact.

The prayer made on behalf of the petitioner is resisted by learned counsel appearing for the respondent on the ground that this court does not have jurisdiction to pass any order referring the matter to the AMRCD and that the petitioner should withdraw the applications and approach the Alternative Dispute Resolution Mechanism introduced by the Office Memorandum on 22<sup>nd</sup> May, 2018. Counsel point to the financial burden on the respondent in continuing to keep the bank guarantees alive which is described as an “unfair obligation” on a party which has emerged successful in the arbitration.

Both parties are *ad idem* that the court does not have jurisdiction to entertain the applications under Section 34 by reason of the Alternative Dispute Resolution Mechanism of the AMRCD which would squarely apply to the parties. The only issue is the mode in which

reference is to be made. A communication dated 30<sup>th</sup> September, 2021 issued by the Ministry of Heavy Industries to the Additional Solicitor General, Eastern India, makes it clear that the onus is on the petitioner as well as the respondent to take appropriate steps by way of an application or otherwise for requesting a resolution of the disputes under the AMRCD. The said communication forms part of a letter dated 1<sup>st</sup> October, 2021 written by the Advocate-on-Record of petitioner to the Ministry of Law and Justice, Ministry of Petroleum and Natural Gas and Ministry of Heavy Industries for reference of all disputes between the petitioner and the respondent to the constituted Forum being AMRCD. The letter was issued in compliance with the directions given by a coordinate Bench in its order dated 30<sup>th</sup> September, 2021 in the matter of referring to the disputes along with the issue of renewal of the bank guarantees for adjudication under the AMRCD mechanism. Therefore there is no doubt that parties are agreeable to approaching the constituted forum for adjudication of disputes between Public Sector Undertakings.

Although much emphasis has been placed on whether this court is empowered to refer the matter to the AMRCD, the answer to such issue can be found in the communication dated 30<sup>th</sup> September, 2021 from the Ministry of Heavy Industries which notes the failure on the part of the parties to take appropriate steps for referring the dispute to the AMRCD.

The present applications may be seen as the culmination of the communication mentioned above and the direction passed by a Co-

ordinate Bench on 30<sup>th</sup> September, 2021. The issue can also be resolved by adjourning the applications with liberty to parties to approach the AMRCD for adjudication of all the pending disputes between them including for renewal of the bank guarantees which appears to be the primary dispute causing particular prejudice to the respondent herein.

The adjournment is not an adjournment simpliciter on the prayer of the petitioner who wants to take advantage of the processes of Court but an adjournment for a specific purpose and in terms of the Office Memorandum dated 22<sup>nd</sup> May, 2018 and other Memoranda referred to in prayer (a) of the petition.

Granting the prayer for adjournment is, of course, subject to both the parties qualifying for approaching the forum constituted pursuant to the Office Memorandum. It is, however, made clear that as opposed to the prayer for an adjournment *sine die* which would give unfettered liberty to the parties to list the matters or relegate them to the backburner, the adjournment granted shall be for a specific period so that the Court can take an informed decision as to the fate of the pending Section 34 applications.

There shall be an order in terms of prayer (a) of the petition referring the disputes in the present ten matters to the Administrative Mechanism for Resolution of Central Public Sector Enterprises Disputes (AMRCD) in accordance with the Office Memoranda mentioned in prayer (a) of the petition.

In light of what has been prayed for, prayer (b), which is for expeditious hearing of the Section 34 applications, is treated as inconsistent with the primary prayer for referring the disputes to the AMRCD and is hence irrelevant

List all the ten applications (AP/862/2012, AP/863/2012, AP/865/2012, AP/872/2012, AP/873/2012, AP/874/2012, AP/1060/2012, AP/1061/2012, AP/1062/2012 and AP/1064/2012) in the third week of December, 2021.

(MOUSHUMI BHATTACHARYA, J.)

bp./R. Bhar