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SLP(C)No. 16816 OF 2004

ITEM NO.61

COURT NO.6

SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).16816/2004

(From the judgement and order dated 09/08/2004 in NM No. 2251/2004 in
AN No.487/2004 in AP No.288/2004 of the HIGH COURT OF BOMBAY)

BOARD OF TRUSTEES OF THE PORT OF BOMBAY

Petitioner(s)

VERSUS

AFCONS INFRASTRUCTURE LTD.

Respondent(s)

(With appln(s) for permission to submit additional documents, to bring
on record additional documents and place additional facts and prayer for interim relief)

Date: 06/12/2004 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SHIVARAJ V. PATIL

HON'BLE MR. JUSTICE B.N. SRIKRISHNA

For Petitioner(s)Mr. G.E. Vahanvati,SG.
Mr. Buddy A. Ranganadhan,Adv.
for M/s. J.B. Dadachanji & Co.,Advs.

For Respondent(s)Mr. F.S. Nariman,Sr.Adv.
Mr. Pratap Venugopal,Adv.
Mr. P.S. Sudheer,Adv.
Ms. Surekha Raman,Adv.
for M/S. K.J. John & Co.,Advs.

UPON hearing counsel the Court made the following
O R D E R

The learned counsel for the parties, today, placed before us an application supported by an affidavit and the consent terms. The learned counsel submitted that the special leave petition may be disposed of in terms of the consent terms, which read:

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"1. The Respondent [AFCONS] agrees to the proposal of the petitioners [Mumbai Port Trust] letter dated 11.11.2004 that Hon'ble Mr. Justice P.N. Bhagwati [retired] be appointed a Sole Arbitrator in respect of all pending disputes/differences and claims and accordingly the said pending disputes/ differences will stand referred to the said Sole Arbitrator.

2.(i) Orders dated 30th June 2004 and 19th July 2004 of the Single Judge of Bombay High Court in Arbitration Petition (L) No.199/2004 and (ii) the Order dated 9th August 2004 of the Division Bench of Bombay High Court (in Notice of Motion No.2251/2004 in Appeal No.487/2004 in Arbitration Petition No. 288/2004) will stand set aside and the following order will be substituted :

[a] AFCONS (Contractor) will be entitled to apply to the Sole Arbitrator within 2 weeks for an order that the amount of Rs.2.83 crores lying deposited in Bombay High Court be paid over to AFCONS and Mb. P.T. [Employer] will be entitled to oppose such application of AFCONS.

ii. Mb. P.T. [Employer] will be equally entitled to apply to the Sole Arbitrator within 2 weeks that the amount deposited in the Bombay High Court be returned to the Mumbai Port Trust [Emp

loyer], and AFCONS [Contractor] will be entitled to oppose such application of Mumbai Port Trust [Employer].

iii. The Sole Arbitrator will dispose of the above applications as expeditiously as possible, and preferably within 2 months from the date thereof, and the parties [i.e. Employer and Contractor] undertake to this Hon'ble Court to abide by the orders of the Sole Arbitrators made in that behalf. The parties (Employer and Contractor) undertake to this Hon'ble Court to apply to Bombay High Court that the amount of Rs.2.83 crores lying deposited in the Bombay High Court be handed over to the party entitled to the same under the Order of the Sole Arbitrator.

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iv. If the Sole Arbitrator accedes to the application of AFCONS, then the withdrawal of Rs.2,83 crores lying deposited in the Bombay High Court will be on furnishment of such a satisfactory Bank guarantee directed by the Sole Arbitrator and

[b] the fourth deduction of Rs.1.05 crores made on 16th September, 2004 will abide by the final award in arbitration proceedings before the Sole Arbitrator.

[c] With regard to further deductions, AFCONS [Contractor] will be entitled to apply to the Sole Arbitrator for directions for restraining Mumbai Port Trust [Employer] from making further deductions, and it will be open to Mumbai Port Trust [Employer] to oppose such application of AFCONS [Contractor]. Each of the parties undertake to this Hon'ble Court to abide by the directions of the Sole Arbitrator on this aspect also.

[d] All the interim directions will be subject to the final award of the Arbitrator and the fact that such interim orders are not to be challenged will not preclude either party from arguing the case on merits before the Sole Arbitrator who shall consider the same without being influenced by the interim directions.

[e] All proceedings before the Sole Arbitrator shall be decided in accordance with law and without being influenced by observations recorded in the Orders of the Bombay High Court.

[f] In view of these Consent Terms, Mumbai Port Trust [Employer] undertakes to this Hon'ble Court to withdraw Appeal No.487/2004 in Arbitration Petition No.288/2004 pending before the Bombay High Court."

In this view, we dispose of the special leave petition in terms of the consent terms, referred to above.

[T.I. Rajput] [Shelly Sengupta]
Court Master Court Master