

ITEM NO.1

COURT NO.7

SECTION III

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 6185-6188/2022 (Arising out of impugned final judgment and order dated 03-02-2022 in FA No. 3040/2021 03-02-2022 in FA No. 3055/2021 03-02-2022 in FA No. 3506/2021 03-02-2022 in FA No. 3507/2021 passed by the High Court of Gujarat at Ahmedabad)

ESSAR BULK TERMINAL LIMITED

Petitioner(s)

VERSUS

ARCELOR MITTAL NIPPON STEEL INDIA LIMITED

Respondent(s)

(FOR ADMISSION and I.R. and IA No.51144/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.51145/2022-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES IA No. 68627/2022 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 20-07-2022 These matters were called on for hearing today.

CORAM : HON'BLE MS. JUSTICE INDIRA BANERJEE
HON'BLE MR. JUSTICE V. RAMASUBRAMANIAN

For Petitioner(s) Mr. Mukul Rohatgi, Sr. Adv.
Mr. Dama Seshadri Naidu, Sr. Adv.
Mr. Mahesh Agarwal, Adv.
Ms. Amita Katragadda, Adv.
Mr. Rishabh Parikh, Adv.
Mr. Kautubh Rai, Adv.
Ms. Kamakshai Rai, Adv.
Ms. Shivali Chaudhary, Adv.
Ms. Poorna Chandiram R., Adv.
Mr. Siddharth Chapalgaonkar, Adv.
Mr. Ahanvay Anand Vardhan, Adv.
Mr. E. C. Agrawala, AOR

For Respondent(s) Mr. Harish Salve, Sr. Adv.
Dr. Abhishek Manu Singhvi, Sr. Adv.
Mr. K.V. Vishvanathan, Sr. Adv.
Mr. Ritin Rai, Sr. Adv.
Mr. Manu Nair, Adv.
Mr. Rishab Gupta, Adv.
Mr. Sairam Subramanian, Adv.
Ms. Shreya Gupta, Adv.
Mr. Neelakh Shreesh, Adv.
Ms. Swageta Ghosh, Adv.
Ms. Archismita Raha, Adv.
Mr. Nidhiram Sharma, Adv.
Mr. S. S. Shroff, AOR

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

Heard learned counsel for the parties.

These special leave petitions are against judgment and order dated 03.02.2022 of the High Court of Gujarat at Ahmedabad disposing of appeals against a common order dated 20.09.2021 passed by the Commercial Court at Surat in two applications under Section 9 of the Arbitration and Conciliation Act, 1996, one filed by the petitioner and the other by the respondent. The operative part the impugned order is set out hereinbelow :-

"176. In the result, the First Appeal No. 3040 of 2021 is partly allowed. The order passed by the Commercial Court directing the appellant-EBTL to maintain a channel depth of 10 meters at all times is hereby quashed and set aside. The other three appeals should fail and are hereby dismissed. The connected Civil Applications stand disposed of."

The operative part of the order dated 20.09.2021 of the Commercial Court at Surat, giving rise to the Appeal in the High Court is set out hereinbelow :-

- "A. By way of Interim Measure under Section 9(1)(ii)(e) of the Arbitration & Conciliation Act, 1996 EBTL is hereby directed to declare the terminal Draft and maintain the Channel Depth as per Paragraph 18.3 of this Order and shall continue to service the vessels of AMNS;*
- B. By way of Interim Measure under Section 9(1)(ii)(e) of the Arbitration & Conciliation Act, 1996 AMNS is hereby directed to pay and continue to pay Invoices raised by EBTL from January 2021 onwards as per Paragraph 17.11 of this Order;*
- C. It is clarified that services rendered by EBTL and payments made by AMNS under this Agreement shall be subject to final outcome of Arbitration Proceedings;*
- D. This interim Measure shall continue for a period of [3] three month from the date of this Order, or until the Ld. Arbitral Tribunal decides Section 17 application of the parties which ever date is earlier;*
- E. In view of the above terms, both the Applications i.e. Commercial C.M.A. No. 2 of 2021 and Commercial C.M.A. No. 99 of 2021 are hereby PARTLY ALLOWED;*
- F. The prayers not granted hereinabove stands REJECTED;*

- G. *It is clarified that views expressed in this Order are only tentative in nature, only with a view to adjudicate the prayer made in this applications and are not aimed to finally adjudicate the issues which are required to be adjudicated by the Ld. Arbitral Tribunal.*
- H. *No order as to costs.*
- I. *Copy of this Order be placed in both the matter."*

The order of the commercial court directing that a channel of 10 meters be maintained at all times has been quashed and set aside. The rest of the directions have been upheld. As per the order of the Commercial Court, the interim measure is to continue for a period of three months from the date of the said order or until the learned Arbitral Tribunal decides the Application under Section 17 of the Arbitration and Conciliation Act, 1996 filed by the parties, whichever is the earlier.

We find no reason to interfere with the aforesaid direction. Mr. Mukul Rohatgi, learned Senior Counsel, submits that the respondent has withdrawn its application under Section 17 of the Arbitration and Conciliation Act, 1996, filed before the Arbitral Tribunal.

The Appellant shall file an application under Section 17 of the Arbitration and Conciliation Act, 1996, before the Arbitral Tribunal at the earliest.

The Arbitral Tribunal shall decide the application under Section 17 of the Arbitration and Conciliation Act, 1996, within eight weeks from the date of its filing, uninfluenced by any observations made in the impugned order of the High Court or in the order of the Commercial Court.

The special leave petitions are, disposed of, accordingly.

Pending applications, if any, shall stand disposed of.

(MANISH ISSRANI)
COURT MASTER (SH)

(MATHEW ABRAHAM)
COURT MASTER (NSH)