

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 3613-3615 OF 2018
(Arising out of S.L.P.(C) Nos. 7973-7975 of 2018)

STATE BANK OF INDIA

APPELLANT(S)

VERSUS

ERICSSON INDIA PRIVATE LIMITED & ORS.

RESPONDENT(S)

O R D E R

Leave granted.

We have heard learned counsel for the parties.

An arbitration dispute is pending between the unsecured creditors and the debtors. The Arbitral Tribunal passed an order under Section 17 of the Arbitration And Conciliation Act, 1996 restraining the claimants and its heirs from alienating, encumbering, transferring any of its assets without permission of the Arbitral Tribunal. The reason given for passing the order is balance of convenience and irreparable injury. The said order has been confirmed by the High Court under Section 37 of the Arbitration and Conciliation Act, 1996.

Principal contention of the secured creditor(s)-appellant(s) herein is that neither they are party before the arbitrator nor the order which purports to be akin to Order XXXVIII Rule 5 of the Civil Procedure Code has been passed by complying with the conditions under Order XXXVIII

Rules 5 and 10 CPC. It is also submitted that the secured creditors cannot be deprived of their statutory rights against the assets by the Arbitral Tribunal.

Learned counsel for the respondents have supported the impugned orders by submitting that the sale by the secured creditors is to be in accordance with law.

There can be no dispute that the Arbitral Tribunal has no jurisdiction to affect the rights and remedies of the third party-secured creditors in the course of determining disputes pending before it. Moreover, the impugned order does not comply with the mandate of Rules 5 and 10 of Order XXXVIII CPC. Thus, the impugned orders cannot be sustained and are accordingly set aside.

It is, however, made clear that the secured creditors will proceed against the asset(s) of the debtor(s) in accordance with law.

This order will not affect any of the remedies of either of the parties.

We have not gone into any other issue except the validity of the impugned order.

The appeals are disposed of as above.

.....J.
(ADARSH KUMAR GOEL)

.....J.
(ROHINTON FALI NARIMAN)

NEW DELHI,
APRIL 5, 2018

ITEM NO.3

COURT NO.11

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 FOR SPECIAL LEAVE TO APPEAL (CIVIL) Nos. 7973-7975/2018

(Arising out of impugned final judgment and order dated 8.3.2018 in CAP No. 254/2018; 8.3.2018 in CAP No. 253/2018; 8.3.2018 in CAP No. 252/2018 passed by the High Court of Judicature at Bombay)

STATE BANK OF INDIA

Appellant(s)

VERSUS

ERICSSON INDIA PRIVATE LIMITED & ORS.

Respondent(s)

(FOR FINAL DISPOSAL)

(IA NO. 41032/2018-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

WITH

SLP(C) No. 7571-7573/2018 (IX)

(FOR EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT ON IA 41171/2018 and FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS ON IA 41178/2018)

SLP(C) No. 7497-7498/2018 (IX)

SLP(C) No. 7976/2018 (IX)

SLP(C) No. 7956/2018 (XIV)

(FOR EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT ON IA 41244/2018 FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS ON IA 41549/2018)

Date : 05-04-2018 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ADARSH KUMAR GOEL

HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

For Appellant(s)

Mr. Kapil Sibal, Sr. Adv.
Mr. Mukul Rohatgi, Sr. Adv.
Mr. Mahesh Agarwal, Adv.
Mr. Ameet Naik, Adv.
Mr. Abhishek Kale, Adv.
Ms. Shally Bhasin, Adv.
Mr. Ankur Saigal, Adv.
Mr. Chaitanya Safaya, Adv.
Mr. Manan Shukla, Adv.
Ms. Ishita Chakrabarti, Adv.
Mr. E. C. Agrawala, AOR

Mr. Tushar Mehta, ASG
 Mr. Sandeep Sethi, ASG
 Mr. Sanjay Kapur, AOR
 Ms. Megha Karnwal, Adv.
 Ms. Mansi Kapur, Adv.
 Ms. Shubhra Kapur, Adv.

Mr. K.V. Viswanathan, Sr. Adv.
 Mr. Sanjay Kapur, AOR
 Ms. Megha Karnwal, Adv.
 Mr. Ravi Raghunath, Adv.
 Ms. Mansi Kapur, Adv.

For Respondent(s) Mr. Arvind P. Datar, Sr. Adv.
 Mr. Sujjain Talwar, Adv.
 Mr. Vikram S. Nankani, Sr. Adv.
 Ms. Iqbal Chagla, Sr. Adv.
 Mr. Naresh Thacker, Adv.
 Mr. Sailesh Poria, Adv.
 Ms. Mihika Jalan, Adv.
 Mr. Ashish Prasad, Adv.
 Ms. Mukta Dutta, Adv.
 Mr. Sanyam Saxena, Adv.
 Mr. Rohan Roy, Adv.
 Mr. M.P. Devanath, AOR

Mr. C.A. Sundaram, Sr. Adv.
 Mr. Anil K. Kher, Sr. Adv.
 Mr. Bhargava V. Desai, AOR
 Mr. Kunal Kher, Adv.
 Mr. Akshat Malpani, Adv.

Mr. Dushyant Dave, Sr. Adv.
 Mr. Gopal Jain, Sr. Adv.
 Mr. Nishant Menon, Adv.
 Mr. Rajiv Sharma, Adv.
 Ms. Kavita Sarin, Adv.
 Mr. Sumit R. Sharma, AOR
 Mr. Shafiq Ahmed, Adv.
 Mr. Prateek Seth, Adv.
 Ms. Prashanti, Adv.
 Mr. A. Nabi, Adv.

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

S.L.P.(C) Nos. 7973-7975/2018:

Leave granted.

The appeals are disposed of in terms of the signed order.

Pending applications, if any, also stand disposed of.

SLP(C) No. 7571-7573/2018 and SLP(C) No. 7956/2018:

In view of the order in Civil Appeals arising out of S.L.P.(C) Nos. 7973-7975 of 2018, the special leave petitions are also disposed of in same terms.

Pending applications, if any, also stand disposed of.

S.L.P. (C) Nos. 7497-7498/2018 AND S.L.P. (C) No. 7976/2018:

We have heard learned counsel for the parties.

Since the petitioners have a remedy of appeal to the Appellate Tribunal, we are not inclined to entertain these petitions.

The special leave petitions are dismissed without prejudice to the remedy of the petitioners to approach the Appellate Tribunal in accordance with law.

If an appeal is filed within a week from today, the Tribunal may decide the same as early as possible, preferably within one month.

The contempt petition will stand deferred till the matter is considered by the Appellate Court.

Pending applications, if any, are also stand disposed of.

(SUSHIL KUMAR RAKHEJA) (SWETA DHYANI) (PARVEEN KUMARI PASRICHA)
COURT MASTER (SH) SENIOR P.A. BRANCH OFFICER
(Signed Order is placed on the file)