

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 3rd July, 2012

+ **LPA No.465/2011**

% **LARSEN AND TOUBRO LTD. Petitioners**

Through: Mr. D.L.N. Rao, Sr. Adv. with Mr.
Ashish Wad & Ms. Kanika Bhutani,
Adv.

Versus

UNION OF INDIA & ORS. Respondents

Through: Mr. B.V. Niren, CGSC for UOI.
Mr. A.S. Rao, Law Officer for
DMRC.
Dr. A.M. Singhvi, Sr. Adv. & Mr.
Ciccu Mukhopadhaya, Sr. Adv. with
Mr. Prashant Mehta, Adv. for
Geomin.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

JUDGMENT

RAJIV SAHAI ENDLAW, J.

1. This Intra-Court appeal impugns the order dated 27th April, 2011 of the learned Single Judge dismissing W.P.(C) No. 5317/2003 preferred by the appellant. Notice of the appeal was issued and vide order dated 24th May, 2011 on the application of the appellant for interim relief, the parties were directed to maintain *status quo*. CM No.16784/2011 has been filed by

M/s Geomin Minerals and Marketing (P) Ltd. for intervening in this appeal. The said M/s Geomin Minerals and Marketing (P) Ltd. had applied before the learned Single Judge also for impleadment and which application though had not been pressed but with liberty to address oral arguments at the time of hearing of the writ petition. We have in these circumstances heard the senior counsel for M/s Geomin Minerals and Marketing (P) Ltd. also.

2. The writ petition from which this appeal arises was filed impugning the order dated 10th July, 2003 of the Mines Tribunal challenging the Revision Application preferred by the appellant against the order dated 27th September, 2001 of the Govt. of Orissa (respondents no.2 to 4 herein) rejecting (i) the application dated 5th November, 1995 of the appellant for Mining Lease for iron ore over an area of 611.58 hectares in Village Badamgarh Pahad, Sundergarh District, (ii) the application dated 11th September 1997 of the appellant for Prospecting Licence over an area of 540.475 hectares in Village Khajuridihi Reserve Forest, Sundergarh District, and (iii) a revised application dated 11th September 1997 of the appellant for a Prospecting Licence over an area of 475.955 hectares in Village Rakma & Marsuan, Keonjhar District.

3. A Memorandum of Understanding (MoU) dated 20th December, 1995

was executed between the Govt. of Orissa and the appellant for establishment by the appellant of a steel plant with an initial capacity of 2.6/3.0 million tones per annum with a provision for expansion to an ultimate capacity of approximately 6/7 million tones per annum at Gopalpur in the District of Ganjam, Orissa. It was *inter alia* recorded in the said MoU:-

“II IRON ORE MINES AND OTHER MINERALS

- c) L&T may discuss the modalities of their participation in joint venture with OMC Ltd., a public sector undertaking of the State Government for exploiting of iron ore mines and/or sub-lease of iron ore mines held on lease by OMC Ltd.
- d) Badamgarh Pahad group of iron ore mines, estimated to contain 275 million tones deposits can be considered by the State Government for recommending grant of PL / ML to L&T for the proposed Steel Plant Project.
- e) L&T will construct townships in the mining areas for its work force for which land will be made available to L&T by the Government of Orissa, as per rules.
- f) The Government of Orissa agrees to assist L&T in acquiring mining lease for limestone/coal and other minerals required for Steel Plan operations.

V SEA PORT AT GOPALPUR

- a) The Government of Orissa has the intention of converting the minor port at Gopalpur into an all wather port with facilities to handle large size vessels.

M.M.T.C. have agreed to collaborate with the Government of Orissa on this project.

- b) The Government of Orissa appreciates that this all-weather port is of vital importance to the Steel Plant Project and therefore, all efforts need to be made to ensure that the port facility is ready by the time the Steel Plan commences commercial production.
- c) L&T will discuss their port requirements including warehousing facilities with the Government of Orissa, Gopalpur port authorities, MMTC and other relevant agencies. These requirements will be taken into account in planning/construction of the port.
- d) For the interim period, till the Gopalpur Port becomes operative, L&T may make temporary arrangements with Paradeep Port and the Government of Orissa agrees to assist L&T in this regard.

XII This MoU is an instrument of understanding and shall be valid for one year from the date of signing the agreement. Extensions, if necessary shall be as per mutual agreement. This MoU will be converted into appropriate agreements in due course.”

4. The Govt. of Orissa vide its letter dated 21st October, 1997 to the Ministry of Mines, Govt. of India informed as under:-

“I am directed to say that the State Government in their Notification No.647/1991 (copy enclosed) have de-reserved and thrown open Iron/Manganese ore bearing are as to the extent of 28.2.46 Sq. Miles in five blocks located in Keonjhar & Sundargarh districts. Accordingly applications were invited from interested private parties with effect from 29.10.1991 as per Rule 59 of the M.C. Rules, 1960 for grant of P.L. and M.L. Subsequently it has been decided by the

State Government to promote establishment of Steel Plants in Orissa by (1) M/s. TISCO Ltd. (2) M/s/ MESCO Ltd. (3) M/s. L&T Ltd. (4) M/s/ Neelachal Ispat Nigam Ltd. to ensure optimum utilization of mineral reserves and to boost up economy of the State which in turn will generate more employment opportunity for the predominantly tribal inhabited Districts. It has further been decided by the Govt. to allot Iron ore reserves to cater to the needs of proposed Steel Plants and accordingly parties have filed P.L. / M.L. applications keeping in view the Iron ore bearing areas tentatively allotted in their favour. A copy of the Govt. decision together with a copy of the comparative reference map in this regard are enclosed for your kind reference.

M/s. L&T Ltd. are setting up an integrated Steel Plant at Gopalpur. In order to meet their captive requirement of iron ore for the proposed Steel Plant M/s. L&T Ltd. have filed two revised PL applications on 11.9.97 in continuation of their M.L. applications filed earlier 15.11.95. The details of the Iron ore reserves as mentioned in the original M.L. application and revised P.L. applications are mentioned below for reference.

M.L. Application	611.58 hec.	Badamgarhpahar	Sundargarh Dist.
1) Revised P.L. Application Dt.11.9.97	540.475 hec.	Khajuridhi R.F.	-do-
2) Revised P.L. Application Dt.11.9.97	475.955 hec.	Rakna Marasum	& Keonjhar District

It may be pointed out that in pursuance of the Government decision, iron ore area to the extent of 754.50 hec. has been allotted to M/s. L&T Ltd. in Block No.2 and 3 of Badamgarhpahar of Sundargarh & Keonjhar district. The allotted area is being presently prospected by the Directorate, Mining & Geology with the assistance of M/s. L&T Ltd. Prospecting work has not yet been completed. However, only after completion of prospecting work of the area necessary geological data can be collected to prepare the mining plan

for scientific operation of the Mines. Against this background M/s. L&T have filed revised P.L. applications over the total area of 1016.430 hec. While furnishing their revised P.L. applications, M/s. L&T have stated that the Geological mapping & Geophysical Survey reveal that the potential iron ore zone continues along the cliff/escarpment. Therefore, they have requested to allot the entire cliff for their prospecting work. This will enable them to conduct rapid survey work and carry on exploration of iron ore along the cliff boundary. They have applied for an area of 540.475 hec. in Keonjhar district which is recorded as Pahad. The revised P.L. application of M/s. L&T, Ltd. in Keonjhar district overlaps to the extent of 17.50 hec. with the recommended M.L. area of M/s. TISCO Ltd. After excluding the said overlapping area in Keonjhar district, the applied or area come to 458.455 hec. Out of the total applied or P.L. area of 998.930 hec. by M/s L&T Ltd. in Keonjhar and Sundargarh district, 540.475 hec. of R.F. land is situated only in Sundargarh district.

For the above forest land of 540.475 hec. situated in Khajuridhi R.F. of Sundargarh district prior clearance of MOEP, Govt. of India under Section-2 of Forest (Conservation), Act, 1980 is a mandatory pre-condition for sanction of P.L.

The State Government have therefore decided to consider for grant of P.L. for iron ore over 998.93 hec. in favour of M/s. L&T Ltd. in terms of section 5(1) (b) read with Section 7(1) of M.M. (P&D) Act, 1957 for a period of two years with the approval of Govt. of India for the development of mineral resources in the State.

In the interface held under the Chairmanship of Secretary Ministry of Steel, Govt. of India in Bhubaneswar on 25.5.97 to review the progress of the Steel Plants in Orissa it was decided that the State Government should recommend the lease applications for iron ore in favour of the proposed Steel Plants while recommending these applications, the decision taken in the above meeting has also been taken into consideration. A copy of the proceedings of the meeting is

enclosed.

It may further be pointed out that two P.L. applications filed by M/s. L&T overlap partly / fully with the 5 M.L. & 23 P.L. applications filed earlier by private parties on 29.10.91 in pursuance to the Notification of State Government Dt. 23.8.91. But in the larger interest of mineral development in the State it has been decided to consider for grant of P.L. over 998.93 hec for iron ore in favour of M/s. L&T Ltd. in terms of Section 11(3) & (4) of M.M. (R&D) Act, 1957 read with Rule 71 of M.C. Rules, 1960, as MOU has been signed with M/s. L&T for establishment of a Steel Plant of Gopalpur.

While recommending these P.L. applications State Government considers it necessary to impose the following conditions under Rule 27(3) of the M.C. Rules, 1960.

- (i) If the lessee fails to set up the full fledged Steel Plant at Gopalpur within a reasonable time (to be intimated by the party at the time of issue of terms and conditions for grant of mining lease) due to any default of its own the lease can be determined by the State Government taking recourse to the provisions of Rule 27(5) of the M.C. Rule 1960. Such area so resumed by the State Govt. can be considered for reallocation to other parties interested for setting up Steel Plants in the State.
- (ii) The lease shall utilize the iron ore despite solely for meeting the captive requirement of the Steel Plant being set up at Gopalpur and no commercial trading of the mineral raised and exploited will be permissible.

It is, therefore, requested that approval of Central Government may please be obtained to amalgamate both the P.L. application & to grant P.L. for iron ore over the total area of 998.93 hec. In Khajuridhi R.F. of Sundargarh district Rakma & Marasuan village of Keonjhar district in favour of M/s. L&T for a period of two years with the special conditions mentioned above and orders communicated to this Department at an early date”.

5. It is the case of the Govt. of Orissa that nothing further happened in pursuance to the MoU aforesaid and the appellant withdrew from and abandoned the same. The Govt. of Orissa vide its letter dated 6th January, 2000 to the Ministry of Mines and Minerals Govt. of India withdrew the proposal dated 21st October, 1997 (supra) for grant of prospecting licence in favour of appellant. The said request was accepted by the Ministry of Mines and Minerals, Govt. of India vide its letter dated 15th February, 2000 and the case closed. The Govt. of Orissa thereafter vide order dated 27th September, 2001 supra, holding that the appellant had not shown any visible interest in establishment of steel plant and had in fact requested for suspension of all activities concerning land acquisition etc. commenced therefor and observing that the Prospecting Licence in favour of the appellant was recommended basically for captive consumption by the appellant in the proposed steel plant at Gopalpur and since the appellant at that moment had no proposal to set up such a steel plant, rejected the Mining Lease/Prospecting Licence applications dated 15th November, 1995 and 11th September, 1997 supra of the appellant.

6. Aggrieved therefrom, the appellant preferred the Revision

Application aforesaid to the Mines Tribunal. It was the case of the Govt. of Orissa before the Mines Tribunal that the MoU aforesaid was not a contract and did not bind the State of Orissa; that the appellant had not made any progress in setting up the steel plant; that since the appellant was not setting up the steel plant at Gopalpur, it had no claim to obtain the mining lease on any special consideration and there were other companies who were interested in setting up steel plant in the State and the State Government would like to consider such companies rather than the appellant for mining lease. The appellant on the contrary argued that it would review in all earnest, the steps for setting up of a steel plant, though not at Gopalpur but at Dhamra, and thus the mining lease should be granted to it on that consideration.

7. The Mines Tribunal however vide order dated 10th July, 2003 impugning which the writ petition from which this appeal arises was filed, observed that the Govt. of Orissa had notified the subject areas for re-grant w.e.f. 29th October, 1991; that 196 applications were filed; the appellant had applied for mining lease only on 5th November, 1995; prior thereto several other applications had been filed; that the MoU aforesaid was entered into and which was in due course to be converted into an appropriate agreement;

that the Govt. of Orissa had recommended the case of the appellant only because of the said MoU; that however since the appellant at that moment had no proposal for setting up a steel plant in the State, the State Govt. had rejected its application. The Mines Tribunal held that since as many as 196 applications had been filed, all the applications be considered in terms of Section 11 of the Mines and Minerals (Development and Regulation) Act, 1957 (MMDR Act), after granting an opportunity of hearing to all the applicants.

8. The learned Single Judge in a detailed judgment, after discussing the plethora of correspondence and documents held –

- (a) that upon the Govt. of Orissa on 29th October, 1991 inviting applications from interested parties for grant of prospecting licence and mining lease, all the said applications would have to be considered in terms of Section 11(2) read with Section 11(4) of the MMDR Act;
- (b) that the communication dated 21st October, 1997 (supra) of Govt. of Orissa to the Ministry of Mines and Minerals, Govt. of India was on account of the MoU aforesaid and there was no other special reason for preferring the appellant over other

applicants;

- (c) that since the MoU was of a date after the said area was thrown open on 29th October, 1991, it could not have defeated the right of the other applicants to be considered under Section 11 of the MMDR Act and the appellant had no vested right to have its application decided irrespective of the other applications;
- (d) that the letter dated 21st October, 1997 (supra) of the Govt. of Orissa did not create any indefeasible right in the appellant and the amendments made in the year 1999 to Section 11 of the MMDR Act and did not take away any such vested right of the appellant;
- (e) that no formal orders granting Prospecting Licence in favour of the appellant were issued pursuant to the letter dated 21st October, 1997 (supra); any prospecting by the appellant was *de hors* the grant of Prospecting Licence and did not create any rights in favour of the appellant;
- (f) the contentions of the appellant that it had performed its part of the MoU and could not set up the steel plant owing to the default of the Govt. of Orissa could not be adjudicated in these

proceedings; however the fact remained that for about five years after the execution of the MoU, the parties had not moved forward in the matter;

- (g) it was however clear that the appellant had decided not to go ahead with setting up of the steel plant at Gopalpur and had proposed an alternative site at Dhamra;
- (h) that none of the terms of the MoU obliged the Govt. of Orissa to accept such alternative proposal of the appellant;
- (i) that the Apex Court in *Sandur Manganese & Iron Ores Ltd. v. State of Karnataka* (2010) 13 SC 1 has held that the State Government under the MMDR Act acts purely as a delegate of the Parliament and has no authority to make commitments to any person that it will, in future, grant a mining lease in the event that person makes investment in any project in the State and cannot be made to honour any such commitment even if made;
- (j) applying the aforesaid judgment it was held that the appellant could not thus rely on the MoU to claim any preferential right in the matter of grant of Mining Lease/Prospecting Licence;

- (k) that even otherwise it was apparent that the MoU had not been acted upon and for this reason also no rights could be enforced thereunder by the appellant;
- (l) that the order dated 27th September, 2001 supra of the State Government could not be said to be reversing the decision contained in the letter dated 21st October, 1997 (supra) and which decision was not “an order” under Section 11(5) of the MMDR Act; it was thus held that the contention of the appellant that the Govt. of Orissa had reviewed its own decision was not tenable.

9. The senior counsel for the appellant before us also has argued that the steel plant at Gopalpur, in terms of the MoU, could not come up owing to the failure of the Govt of Orissa to set up a port at Gopalpur. He has further contended that the Govt. of Orissa was bound by the decision contained in the letter dated 21st October, 1997 and could not have recalled the same. It is yet further argued that the order dated 27th September, 2001 has been made without giving any proper hearing or without complying with the principles of natural justice. It is yet further contended that the amendments of the year 1999 to Section 11 of the MMDR Act have not been properly applied and

the judgment of the Apex Court in *Sandur Manganese & Iron Ores Ltd.* supra has been wrongly applied.

10. Per contra, the counsel for the State of Orissa has contended that the project at Gopalpur was the basis for giving preference to the appellant; that setting up of a port at Gopalpur was not a pre-condition under the MoU for the appellant to set up a steel plant; that it was the appellant which first requested for suspension of all steps being taken in pursuance to the MoU and thereafter gave up the proposal for setting up of the steel plant at Gopalpur; that the proposal subsequently made, as an afterthought for setting up of the steel plant at Dhamra was also not concrete and in any case was of others and not of the appellant.

11. The senior counsel for Geomin Minerals and Marketing (P) Ltd. has argued that it had applied for Prospecting Licence over the overlapping areas even prior to 29th October, 1991 when the Govt. of Orissa had invited applications for Prospecting Licence; that it had filed W.P.(C) No. 23/2009 before the High Court of Orissa for a direction to the Govt. of Orissa to decide the said application and also for the relief of restraining the State of Orissa from considering any subsequent applications; that it thus has preferential right under Section 11(1) of the Act; that the said writ petition

has been allowed vide judgment dated 14th July, 2010 and it has been held to be entitled to a preferential right of consideration; that the SLPs preferred against the said judgment are pending consideration; that if the said judgment of the Division Bench of the Orissa High Court is upheld by the Supreme Court, the appellant would not be entitled to any relief; that even if the Supreme Court reverses the judgment of the Orissa High Court, the matter would require further consideration; that the MoU supra was for a period of one year only and automatically lapsed, besides being abandoned by the appellant; else the judgment of the learned Single Judge is supported. It is further contended that the State Govt. of Orissa, in writing the letter dated 27th September, 2001 (surpa) had not acted under Section 11(5) of the Act.

12. It is important to highlight that the present proceedings are not for enforcement or specific performance of the obligations under the MoU. The present proceedings arise as aforesaid from the order of the Mines Tribunal on the Revision Application preferred by the appellant against the order dated 27th September, 2001 of the Govt. of Orissa. Needless to add that the Mines Tribunal was not competent to go into the question of the enforcement of the MoU or as to who, whether the appellant or the Govt. of

Orissa, was in breach thereof. The appellant till date, inspite of further eleven years having lapsed, has not taken any steps for enforcement of the MoU. It can safely be assumed now to be dead.

13. Seen in the said perspective we have wondered whether the order dated 27th September, 2001 of the Govt. of Orissa can be said to be suffering from any error. All that the Govt. of Orissa did by the said order was to reject the applications of the appellant for Prospecting Licence and for Mining Lease and which were earlier recommended for grant to the Central Government. The reason was simple. The recommendation was predicated on the MoU and which then as also now was/is dead.

14. We have wondered whether the appellant can claim any rights under the recommendation dated 21st October, 1997 for a prospecting Licence/Mining Lease, without setting up the steel plant in the State. The recommendation as aforesaid was a composite one. Mineral concessions were recommended to be given to the appellant to set up a steel plant in the State, to the obvious advantage of the State. Can the appellant, without setting up the steel plant, still seek preferential rights to mineral concessions? The answer obviously has to be no. The recommendation for grant of mineral concessions was part of a package under which the

appellant was to set up a steel plant. The appellant cannot reap the benefits without creating such benefits for the State. If allowed to do so, the same would amount to the appellant claiming the complimentary breakfast without availing and paying for the bed.

15. On this short ground alone, we do not find any merit in this appeal and dismiss the same. No order as to costs.

RAJIV SAHAI ENDLAW, J

ACTING CHIEF JUSTICE

JULY 3, 2012

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