

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE CIVIL JURISDICTION

ARBITRATION PETITION (L) NO.305/2016

M/s. Prince Marine Transport Service Pvt. Ltd. ... Petitioner

Vs.

M/s. Minescapte Minerals Pvt. Ltd. ... Respondent

Mr. Dhawni Mehta i/b. D. M. Law Chambers for the petitioner
Mr. Shiraj Rustomjee, Senior Advocate with Mr.Subodh Kurdukar with
Ms. Krishna Borkute i/b. Kurdukar Associates for the Respondent

CORAM : K. K. TATED, J.
DATE : FEBRUARY 25, 2016

PC.:

1. Mentioned. Not on board. At the request of learned counsel for the petitioner, the matter is taken on board for urgent orders.
2. This petition is u/s. 9 of the Arbitration and Conciliation Act, 1996 for an order of injunction restraining the respondent in any manner from assigning, selling, transferring, alienating and/or creating any third party rights, title or interest in respect of two barges or parting with the possession thereof to any other person than the petitioner, as more particularly described in exhibit-M to the petition.
3. The learned counsel for the petitioner submits that as per MOU dated 15/01/2016, they agreed to purchase two barges i.e. (1) M.V.Jay Mahaganapati, Official No.PNJ-332 and (2) M.V. Jay

Mahavenkateshwara Official No.PNJ-354 for consideration of Rs.4 crores. He submits that the Appellant was supposed to make the payment as follows:

- a. Upon signing the MOUS – Rs.20 lacs
- b. On or before 22/01/216 – Rs. 1 crore
- c. On or before 29/01/2016 – Rs. 1 crore
- d. On or before 05/02/2016 – Rs. 1 crore
- e. On or before 10/02/2016 – Rs. 80 lacs

4. He submits that as per the MOU they have already paid Rs.70 lacs. He submits that there was delay on their part to make the payment. Hence, they requested the respondent for extension of time. Pursuant to their request, the respondent, by Email dated 11/02/2016 re-scheduled the payment as under:

- a. On 11/02/2016 – Rs. 50 lacs
- b. On 16/02/2016 – Rs. 50 lacs
- c. Before 29/02/2016 Rs. 2.30 crores

5. The learned counsel for the petitioner submits that thereafter the respondent issued letter dated 17/02/2016 terminating the MOU for non payment of purchase price as stated in the MOU dated 15/01/2016. The petitioner submits that they shown their readiness and willingness to make the entire payment to the respondent vide their Email dated 10/02/2016. The learned counsel for the petitioner submits that they have apprehension that in the meantime, the

respondent may create third party right, title or interest in respect of the said barges. Hence, they filed the petition u/s. 9 of the Arbitration and Conciliation Act, 1996. He submits that if third party right is created, irreparable loss and injury will be caused to the petitioner. Hence, in the interest of justice, this Hon'ble Court be pleased to restrain the respondent from creating any third party right, title interest in respect of the said barges.

6. On the other hand, the learned counsel for the respondent vehemently opposed the arbitration petition. He submits that as per the MOU dated 15/01/2016 the petitioner was supposed to make payment within stipulated time as stated hereinabove. He submits that time was made essence of the contract. He submits that considering the difficulties of the petitioner, they revised the schedule of payment by Email dated 11/02/2016. The petitioner by Email dated 12/02/2016 informed the respondent, that it is not possible for them to make the payment as per the revised schedule. Hence, the respondent, by their letter dated 17/02/2016 terminated the MOU. He submits that once the MOU is terminated by the respondent, there is no question of granting any injunction against the respondent. He submits that at the most, the petitioner can claim damages, if they are entitled, before the arbitral tribunal. Hence, there is no question of granting any relief in the petition.

7. Considering the submissions made by the learned counsel for the parties, it is to be noted that admittedly, the petitioner failed and neglected to pay the amount as per the MOU dated 15/01/2016 within

stipulated time. Moreover, the petitioner, by their Email dated 11/02/2016 shown their inability to make the payment as per the revised schedule proposed by the respondent by their Email. Hence, the respondent terminated the MOU by letter dated 17/02/2016. Considering these facts, I do not find any reason to pass any injunction order against the respondents.

8. Hence, the petition stands rejected.

(K.K.TATED,J.)