IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 302 OF 2016
IN
COMPANY PETITION NO. 621 OF 2014
WITH
NOTICE OF MOTION NO. 1494 OF 2016

Savair Energy Limited .. Appellants
V/s
IHI Corporation .. Respondents

Mr. Fredun Devitre, Senior Advocate with Mr. Riyaz Chagla and Mr. S. Bhaucha i/b D.H. Law & Associates for the appellants.
Mr. Raj Panchmatia with Mr. Peshwan Jehangir and Mr. H. Vidhani i/b Khaitan & Co. for the respondents.

CORAM: DR. MANJULA CHELLUR, CJ. &
M.S. SONAK, J.

DATE : 19th SEPTEMBER 2016

P.C.:

1] Admit.

2] With the consent of and at the request of the learned counsel for the parties, we proceed to dispose of this appeal finally.

3] The learned counsel for the parties were heard at great length on two earlier occasions. The matter was also adjourned in order to enable the appellants company to state whether the appellants will be in a position to furnish bank guarantee in order to secure the amount of Rs.4.5 crores, which the appellants have been directed to deposit in this court, in terms of the impugned order dated 6 October 2015.

4] Finally, Mr. Devitre, learned Senior Advocate for the appellants, on basis of instructions from the appellants has made a statement that the appellants will furnish a bank guarantee of a nationalised bnak in an amount of Rs.4.5 crores within six weeks from today in lieu of the direction in the impugned order for deposit of the said amount. Mr. Raj Panchmatia, learned counsel for the respondents expressed no opposition to the acceptance of such bank guarantee, in lieu of the direction for deposit.

5] In view of the aforesaid, we are not referring to the merits and demerits of the respective contentions and we proceed to modify the impugned order dated 6 October 2015, by way of permitting the appellants to furnish bank guarantee of a nationalised bank in an amount of Rs.4.5 crores, within a period of six weeks from today, in lieu of the liberty granted in the impugned order for deposit of the said sum in this court. The impugned order is modified accordingly.

6] Accordingly, it is held that in case the appellants furnish bank guarantee of a nationalised bank in a sum of Rs.4.5 crores within six weeks from today, instead of depositing the said sum of Rs.4.5 crores in terms of the impugned order dated 6 October 2015, the company petition instituted by the respondents shall stand dismissed. The amount of Rs.2.5 crores, which is already deposited by the appellants as well as the fate of the bank guarantee, shall abide by the result of the arbitration proceedings by Indian Merchants Chamber, between the parties. The amount of Rs.2.5 crores which is deposited in this court, shall be invested in appropriate interest bearing instrument with the nationalised bank. So also, the appellants shall keep alive the bank guarantee, until appropriate orders are made in the arbitration proceedings with regard to the same.

7] In case, the appellants fail to furnish the bank guarantee within a period of six weeks from today, this appeal will stand dismissed and the consequences provided in the impugned order dated 6 October 2015 shall follow.

8] The appeal is disposed of in the aforesaid terms.

9] In view of the disposal of the appeal, notice of motion no. 1494 of 2016 does not survive, and the same also stands disposed of.

10] All concerned to act on basis of authenticated copy of this order.

(M.S. SONAK, J.) **(CHIEF JUSTICE)**