

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 29TH DAY OF DECEMBER 2015

THE HON'BLE MR. JUSTICE K.KALYANASUNDARAM

O.A.No.1314 of 2015

In the matter of the Agreement dated 16.04.2012 between The Oil & Natural Gas Corporation Ltd. and Oren Hydrocarbons Pvt. Ltd;

and In the matter of The Arbitration & Conciliation Act, 1996;

M/s.Oren Hydrocarbons Pvt. Ltd.,
Registered address;
28/2B, Saravana Street, T.Nagar
Chennai-600 017.Applicant

-Versus-

1.M/s.Oil & Natural Gas Corporation Ltd.,
Thalamuthu Natarajan Building
No.1, Gandhi Irwin Road
Egmore, Chennai-600 008.

2.ICICI Bank Ltd.,
1st Floor, 110, NH Road
Nungambakkam, Chennai 600 034. ..Respondents

Original Application praying that this Hon'ble Court be pleased to grant an interim injunction restraining the respondents, their men, agents, or any one acting through or under them, from in any manner encashing the performance bank guarantee No.0009BG00115312 dated 08.03.2012, procured by the applicant and issued in favour of the 1st respondent.

This Original Application coming on this day before this court for hearing the court made the following

Mr.Sathish Parasaran, learned counsel for the applicant submitted that the applicant had entered into an agreement with the first respondent for supply of 45360 MT of Barytes powder having 4.15 Sp.Grade vide agreement dated 16.04.2012. Accordingly, the applicant was also performing its obligation under the said agreement.

2.It is further submitted that the supply of Barytes powder is contingent upon the availability of Barytes Lumps, which was supplied by the Andhra Pradesh Mineral Development Corporation Ltd (herein after referred to as "APMDC") which has monopoly in supplying Barytes Lumps in India, which can produce Barytes powder having 4.15 Sp.Grade.

3. Whiles, in the year 2014, A.P.Mineral Development Corporation Ltd., stopped supplying Barytes Lumps to the applicant and due to non availability of raw materials, the applicant could not perform its obligation under the contract as it was frustrated due to impossibility of performance. The applicant vide its letter dated 11.12.2014 intimated the respondents and also requested them to go for alternative supply of Barytes Powder. However, there was no immediate response from the first respondent. But, by letter dated

09.03.2015, the first respondent insisted the applicant to supply remaining materials as per the agreement. The applicant was taking all possible efforts to procure supply of Barytes Lumps of the required specification with APMDC as well as with third parties. However, the applicant could not procure the required raw material.

4.It is further submitted, the applicant had executed a conditional bank guarantee on 18.03.2012 in favour of General Manager (MM)- Head Purchase of Corporate Materials Management Department for a sum of Rs.99,39,000/-. The first respondent can invoke Bank Guarantee only in case of breach of agreement. But the first respondent without issuing any show cause notice and without cancelling the agreement had invoked the Bank Guarantee through E-mail dated 23.12.2015 in a fraudulent manner.

5.The learned counsel would contend that if the first respondent was allowed to receive the money as per his invocation, the reputation of the applicant would be seriously prejudiced. The learned counsel further submitted that the applicant undertakes to renew the bank guarantee till 30.06.2016 as per its letter dated 24.12.2015.

6.The learned counsel in support of his contention, relied on the judgment of this Court reported in **2015-3-**

7.Mr.K.Kulandaivelu, learned counsel for the first respondent seeks time to file counter.

8.This Court, upon hearing the submission of the learned Counsel appearing for the applicant and on perusing the materials placed before it, is of the view that a prima facie case has been made out for grant of interim injunction. Hence, there shall be an order of ad-interim injunction as prayed for restraining the respondents from in any manner encashing the performance bank guarantee No.009BG00115312 dated 08.03.2012 procured by the applicant and issued in favour of the first respondent, if not already encashed.

9.Post the matter on 20.01.2016.

sd/.M.K.K.S.J

29.12.2015

//Certified to be a true copy//

Dated this the day of 2016

R.s/04.01.2016

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.