

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

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HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE
AND
HON'BLE SRI JUSTICE P. NAVEEN RAO

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ARBITRATION APPLICATION No. 9 OF 2016

Date: 24.02.2016

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Between:

M/s. Duro Felguera Plantas Industrials S.A.,
Rep., by its authorized representative,
Gijon, Spain.

... Petitioner

And

Gangavaram Port Limited
Hyderabad & another.

... Respondents

**HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE
AND
HON'BLE SRI JUSTICE P. NAVEEN RAO**

ARBITRATION APPLICATION No. 9 OF 2016

PC: (per the Hon'ble the Acting Chief Justice Dilip B. Bhosale)

In this arbitration application, the applicant seeks the following prayers:

- "a) Pass an ad-interim injunction preferably ex-parte against the respondent No.1, its agents, officers, employees, etc., restraining them from invoking the Performance Bank Guarantee numbered 1280017, the BNP Advance Payment Bank Guarantee numbered 1280016, each detailed earlier in this application;
- b) Pass ad-interim injunction, preferably ex-parte restraining the respondent No.2 from releasing the amounts under the Performance Bank Guarantee numbered 1280017 and the BNP Advance Payment Bank Guarantee numbered 1280016;
- c) Pass ad-interim injunction, preferably ex-parte directing the respondent No.1 to submit the proceeds of the aforementioned Bank Guarantees invoked (if already encashed) along with interest @ 18% p.a from the date of encashment up to date of such retention by it, in the registry of this Hon'ble Court. Such proceeds may be deposited in interest bearing securities with a nationalized bank."

On 09.01.2016, a Division Bench, in the vacation, granted an interim injunction restraining the 2nd respondent from releasing the amount under the Performance Bank Guarantee No.1280017 and BNP Advance Payment Bank Guarantee No.1280016 up to 22.01.2016 and

directed to post the application before regular Court on 19.01.2016.

The 1st respondent has filed affidavit, dated 16.02.2016, stating that even before interim order was passed (09.01.2016) the Bank guarantees were invoked on 07.01.2016 and the proceeds were received by them on 08.01.2016 by way of two separate demand drafts bearing D.D.No.612576 of Rs.17,41,88,399=82 ps and D.D.No.612577 for Rs.17,41,88,399=82 ps. After realization of the demand draft proceeds, the 1st respondent kept the amounts in fixed deposits for a period of one year i.e., up to 16.01.2017 under fixed deposit receipt Nos.TDR/MTL/E 5962430 and TDR/MTL/E 5962431 respectively in Oriental Bank of Commerce, Jubilee Hills, Hyderabad. Respondent No.1 in paragraph 6 of the affidavit has further stated as follows:

“As the supplies made are put in use by the 1st respondent to arrest further loss, despite, its defective, faulty and rejection, the 1st respondent undertake to this Hon’ble Court for not using the amounts realized under the invocation of Bank Guarantees pertaining to the Package No.4 till the Arbitral Tribunal is constituted as per the procedure contemplated.”

In view of the statements made and undertaking given in the affidavit, this application can be conveniently disposed of by the order that we propose to pass and when we so expressed, learned counsel appearing for the parties have agreed for the same. Hence, in the facts and circumstances of the case, we dispose of this arbitration application by the following order:

“The statements made and undertaking given by the 1st respondent on affidavit, dated 16.02.2016, are recorded and accepted. In view thereof, respondent No.1 is directed not to encash the fixed deposit receipts till Arbitral Tribunal is constituted and till they obtain appropriate orders in respect thereof from the Tribunal. It is needless to mention that the Arbitral Tribunal shall consider respondent No.1’s application for any relief in respect of the fixed deposit receipts on merits

in accordance with law and uninfluenced by the observations made in the order, dated 09.01.2016.”

Miscellaneous petitions, if any, shall also stand disposed of.

DILIP B. BHOSALE, ACJ

P. NAVEEN RAO, J

Date: 24.02.2016
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