

IN THE HIGH COURT OF BOMBAY AT GOA
APPEAL UNDER ARBITRATION ACT NO. 3 OF 2017

ROYALLINE RESOURCES LTD., REP. THR
ITS AUT. SIG., AND ANR., ... Appellants
Versus
SUDAR INDUSTRIES LTD., ... Respondent

Mr. S.S. Kantak, Senior Advocate with Adv. Hanumant D. Naik
for the Appellants.

Adv. Shivan Desai with Adv. J. Ramaiya for the Respondent.

Coram:- C. V. BHADANG, J.

Date:- 23rd January, 2017

P.C.:

Heard Shri Kantak, the learned Senior Counsel for the appellants and Shri Desai, the learned counsel for the respondent.

2. The appellants are challenging two orders both dated 19/1/2017 passed by the learned District Judge, Margao in Arbitration Application No.3/2017. By the first order, the objection raised on behalf of the appellants to the territorial jurisdiction of the learned District Judge to entertain the application under section 9 of the Arbitration and Conciliation Act 1996 (Act, for short) has been negatived holding that the Court has jurisdiction. By the second order, the learned District Judge has directed the appellant (respondent no.2 before the

learned District Judge) not to lift any further ore from Cavorem until further orders.

3. The brief facts are that the appellants had agreed to purchase ore from the respondent in respect of which an agreement dated 22/9/2015 was entered into between the parties containing an arbitration clause. As disputes and differences arose between the parties, the respondent approached the learned District Judge with an application under section 9 of the Act, for interim measure restraining the appellants or anybody on their behalf from acting in furtherance of the contract dated 22/9/2015 and/or from lifting the ore.

4. According to the appellants, there is a subsequent Memorandum of Understanding (MOU) executed between the parties on 21/6/2016, in which the parties had agreed that venue of the arbitration shall be Mumbai and the Courts in Mumbai shall have exclusive jurisdiction in the matter.

5. It appears that on behalf of the appellants a preliminary objection was raised before the learned District Judge on the ground that the District Judge, Margao will have no territorial jurisdiction to entertain the application under section 9 of the Act. The learned District Judge after considering the terms of the agreement dated 22/9/2015 and placing reliance on the decision

of the Hon'ble Supreme Court in the case of BALCO, 2016 BCI 140, came to the conclusion that the District Court at Margao will have territorial jurisdiction and in that view of the matter, the preliminary objection was rejected. The learned District Judge by a subsequent order of even date had also restrained the appellant from lifting the ore.

6. Shri Kantak, the learned Senior Counsel for the appellants in all fairness does not dispute that going by the agreement dated 22/9/2015, the Margao Court would have jurisdiction. The contention, however, is that there was no concession as recorded by the learned District Judge in para 22 of the impugned judgment. He submits that the question of jurisdiction has necessarily to be decided considering the provisions of the MOU and more particularly, Clause 10 thereof.

7. Shri Desai, the learned counsel for the respondent submits that the entire arguments on behalf of the appellants before the learned District Judge were based and confined to the contents of the agreement of 22/9/2015 and there was no reference to the MOU. Shri Desai submits that the MOU is a fraudulent document and the purported signature of the respondent thereon is forged.

8. Both the parties state that the matter can be sent back to the

learned District Judge with a direction to decide the application on merits including the question of jurisdiction on the basis of the MOU dated 21/6/2016. Considering the overall circumstances, in my considered view it would neither be necessary nor appropriate to go into the question whether there was any such concession recorded on behalf of the appellants. In so far as the interim order is concerned, I am informed that the learned District Judge has fixed the application for hearing tomorrow. In that view of the matter, I am not inclined to interfere with the interim order directing the appellants not to lift the ore. In the result the following order is passed:

ORDER:

(i) The learned District Judge shall decide the application under section 9 of the Act on its own merits as expeditiously as possible and preferably within a period of three weeks from the receipt of this order.

(ii) All the rival contentions of the parties on merits including the issue of territorial jurisdiction (based on the MOU dated 21/6/2016) are left open.

(iii) The appeal is disposed of in the aforesaid terms with no

order as to costs.

C. V. BHADANG, J.

ap/-