

IN THE HIGH COURT OF BOMBAY AT GOA.

**MISC.CIVIL APPLICATION NO. 234 OF 2017
IN
WRIT PETITION NO. 609 OF 2016**

M/S. FOMENTO RESOURCES
PVT. LTD. THR. ITS DIRECTOR
AND ANR.,

... Applicants

Versus

BOARD OF TRUSTEES OF
MORMUGAO PORT
TURST, REP. BY ITS
CHAIRMAN AND 2 ORS.,

... Respondents.

With

**MISC.CIVIL APPLICATION NO. 389 OF 2017
IN
WRIT PETITION NO. 609 OF 2016**

M/S. FOMENTO RESOURCES
PVT. LTD. THR. ITS DIRECTOR
AND ANR.,

... Applicants

Versus

BOARD OF TRUSTEES OF
MORMUGAO PORT
TURST, REP. BY ITS
CHAIRMAN AND 2 ORS.,

... Respondents.

Mr. S. S. Kantak, Senior Advocate with Mr. Parag S Rao, Advocate for the applicants.

Mr. Y. V. Nadkarni, Advocate for the respondent nos.1 and 2.

Mr. P. Dangui, Government Advocate for the respondent no.3.

Coram:- M. S. SONAK, J.

Date:- 16th May, 2017.

P.C.

Learned Counsel for the parties state that since I was in no manner concerned with the issues in the present petition, they have no objection to my taking up this matter.

2. Heard Mr. S. S. Kantak, learned Senior Counsel for the applicants/petitioners, Mr. Y. V. Nadkarni, learned Counsel for the respondent nos.1 and 2 and Mr. P. Dangui, learned Government Advocate for the respondent no.3.

3. Learned Counsel for the parties state that MCA Nos.234/2017 and 389/2017 can be disposed of by a common order.

4. This Court, by order dated 15.2.2017 issued Rule in the main petition and further, made an interim order. It appears that some difficulties have arisen in the matter of implementation of the said order and therefore, present MCAs' have been taken out. The learned Counsel for the parties also point out that there are subsequent developments, which are also required to be taken into consideration for the purposes of disposal of these MCAs'.

5. Upon hearing the learned Counsel for the parties, it appears that some difficulties did arise, mainly, in the matter of loading of iron ore for the purpose of eventual export. Certain subsequent developments, in terms of which, some reduction may be necessary in the matter of amounts earlier directed to be secured, are also required to be taken cognizance of.

6. Accordingly, learned Counsel for the parties, submit that

suitable orders may be made, so that, controversial issues are left open at the stage of final disposal of the matter and at the same time, there is no considerable difficulty in the matter of loading and eventual export of the iron ore.

7. Considering the difficulties expressed, instead of interim arrangement incorporated in the order dated 15.2.2017, the parties, will now abide by interim arrangement recorded in the present order. Accordingly, these MCAs' can be disposed of in terms of the following order, which is, clearly, without prejudice to the rights and contentions of the parties, to be raised and determined in the pending petition:-

(a) The Petitioners shall deposit on or before 25.5.2017 or before loading of the iron ore, whichever is earlier an amount of Rs.58,84,000/- with the respondent no.1 without prejudice to the rights and contentions of the petitioners in the main petition.

(b) In case, the petitioners, are constrained to avail extension upto 31.10.2017 for loading and eventual export of iron ore, then, the petitioners, shall deposit further amount of Rs.7,66,000/- with the respondent no.1 on or before 1.7.2017 or before the date of loading of the iron ore whichever is earlier. Again, this shall be without prejudice to the rights and contentions of the petitioners in the main petition. (e)

(c) The Petitioners, shall load and thereafter export the iron ore on "*best efforts basis*" on or before 31.5.2017. However, despite best efforts, if this is not possible, the petitioners, shall ensure that iron ore is loaded and exported latest by 31.10.2017.

(d) If the petitioners fail to load, export, the entire ore from the Port premises latest by 31.10.2017, respondent no.1 shall be at liberty to dispose of said ore in accordance with law.

(e) The Petitioners shall load the ore in question upon the vessel on their own and at their own costs without prejudice to claim a set off, if permissible in law, in this regard. Such set off, if claimed will be determined on its own merits and in accordance with law.

(f) The Petitioners, shall pay all applicable charges in relation to loading and exporting of such iron ore to the respondent no.1 before actual loading operations commence.

(g) The Authorised representative of the respondent no.1 shall submit an undertaking to the Registrar of this Court within one week of the deposit of the amounts as aforesaid by the petitioners, undertaking to refund the entire amount received by them under the present interim arrangement alongwith interest as may be determined by this Court, in case, this Court, comes to the conclusion that such amount was not required to be paid by the petitioners to the respondent no.1.

(h) On account of certain subsequent developments, Bank Guarantee of Rs.96,00,000/- bearing No. 0101002017023 dated 27.2.2017 furnished by the petitioners in compliance with order dated 15.2.2017 shall be returned to the petitioners by the Registry.

8. It is, once again made clear that this interim arrangement is without prejudice to the rights and contentions of all the parties and

consequently all contentions of all the parties are left open to be adjudicated at the final hearing of the petition.

9. The aforesaid MCAs' are disposed of in the aforesaid terms.

10. All concerned to act on the duly authenticated copy of this order.

M. S. SONAK, J.

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