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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ FAO(OS) (COMM) 78/2017

M/S GUJARAT NRE COKE LIMITED & ANR ..... Appellants
Through: Mr. Sandeep Bajaj with Mr. Soayib Qureshi, Advs.

versus

M/S JINDAL STEEL AND POWER LIMITED ..... Respondent
Through: Mr. Gopal Jain, Sr. Adv. with Mr. Ajay Bhargava, Mr. Anshuman Sharma, Mr. Shreshth Sharma, Mr. Aseem Chaturvedi & Ms. Chandni Anand, Advs.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE REKHA PALLI

O R D E R
% **19.05.2017**

Caveat No.347/2017

Learned counsel for the caveator has entered appearance.

Caveat stands discharged.

CM Nos.13671/2017 *(exemption)* **& 13672/2017** *(exemption)*

Allowed, subject to just exceptions.

Applications stand disposed of.

FAO(OS) (COMM) No.78/2017 & CM No.13670/2017 *(stay)*

1. The appeal questions the decision of the learned Single Judge rejecting the petition under Section 34 of the Arbitration and Conciliation

Act (hereinafter referred to as “the Act”).

2. The appellant had questioned an award rendered by the Arbitral Tribunal. The respondent (hereinafter referred to as “Jindal Steel”) had initiated arbitration proceedings, on the basis of a coal purchase agreement of 27.08.2013 – which was subsequently amended on 12.09.2013. Under the terms of the original coal purchase agreement to sell 50,000 MT of NRE Hard Coking Coal of agreed specifications to Jindal Steel between 01.09.2013 and 31.03.2014. Jindal Steel had advanced Rs.24.75 crores for this purpose. Additional demand was made by the appellant on the basis of which the amended coal purchase agreement was executed. This resulted in the appellant undertaking to supply 65,000 MT of the product instead of the originally agreed 50,000 MT. The amount payable to the appellant was also enhanced to Rs.39 crores. Jindal Steel alleged that though it had paid the amount, the appellant failed to fulfil its part of the bargain to supply the requisite quantity of coal. Jindal Steel therefore sued for recovery of the balance/excess amount with interest.

3. The Tribunal entered upon reference and conducted a preliminary hearing on 14.01.2016 whereby it fixed the schedule for completion of proceedings and other timelines. The appellant however did not file its statement of defence and later proceeded to absent itself, virtually abandoning the prosecution and the defence of the claim. The Arbitrator nevertheless continued to issue notices to the appellant despite which there was no response on its behalf. Eventually, the arbitral award granted payment of Rs.36,89,15,520/- being the unadjusted advance payment together with interest @ 16%.

4. The appellant had sought to question the award and filed the petition under Section 34, on 30.11.2016. On substance, it was considered to be defective in certain particulars. The petition was returned on 01.12.2016 again at the stage of refilling. On 16.12.2016, further defects were noticed and the petition was returned on 17.12.2016. This process was again repeated on 02.01.2017 when it was returned again on 03.01.2017. Ultimately, refiling in the acceptable format took place on 23.01.2017 i.e. more than 54 days after the petition was initially filed. The learned Single Judge after satisfying himself about the factual material – the Registry maintained logs, was of the view that the appellant approached the Court beyond the 120 days period contemplated under Section 34(3) of the Act. The learned Single Judge noted the Division Bench ruling in Delhi Development Authority v. M/s Durga Construction Co. (2013) 139 DRJ 133 which was relied upon. He thereafter concluded that the delay occasioned in the filing of the petition and the refiling could not be condoned. After dealing with this aspect, the learned Single Judge proceeded to examine the merits and reasoned that the appellant's submission with respect to illegality in the award of damages was insubstantial. It was held – and the conclusion which is unexceptionable – according to this Court – that the supplier i.e. the appellant received the amounts but had not discharged its part of the obligations by making available the requisite quantity of coal in the terms agreed upon and that in these circumstances the claim for balance amounts was justified.

5. This Court does not discern any illegality in the award, patent or otherwise, or any other rationale for the Single Judge to have justifiably

interfered with the award. Given these features, in the present appeal the Court is of the opinion that there is no merit in the plea of the appellant.

6. It was stated that the appellant is in liquidation and was placed under the management of the Insolvency Practitioner under the Insolvency and Bankruptcy Court on 07.04.2017. The Court notices that this aspect that the appeal was filed on 01.03.2017 and the first hearing took place on 12.04.2017 and having regard to the facts, the claim as to whether the award is illegal is a matter of law to be considered independently.

7. FAO(OS) (COMM) No.78/2017 is accordingly dismissed.

S. RAVINDRA BHAT, J

REKHA PALLI, J

MAY 19, 2017
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