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

\+ O.M.P.(I) (COMM.) 153/2017

JINDAL STEEL AND POWER LIMITED ..... Petitioner
Through: Mr Aseem Chaturvedi, Mr Shresth Sharma, Mr Anshuman Sharma and Ms Chandini Anand, Advocates.

versus

XCOAL ENERGY & RESOURCES GMBH ..... Respondent
Through Mr. Aman Varma, Advocate

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% 17.04.2017

IA No.4254/2017

1. Exemption is allowed, subject to all just exceptions.

2. The application stands disposed of.

O.M.P.(I) (COMM.) 153/2017

3. The petitioner has filed the present petition under Section 9 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, praying as under:-

> "(a) Pass an Order restraining the Respondent, their servants and agents and all persons acting on their behalf from selling, disposing off, alienating or creating any third-party interest with respect to the cargo / consignment of coking coal forming subject matter of the Contract dated 16th February 2017;
>
> (b) Pass an Order directing the Respondents to maintain *status quo* with regard to the cargo / consignment of coking coal pending determination of the disputes

between the parties in accordance with the terms of the Contract dated 16 February 2017;

(c) Pass an Order directing detention and preservation of the cargo / consignment of coking coal forming subject matter of the Contract dated 16th February 2017, till the adjudication of the disputes between the parties; and

(d) Pass an Order directing interim custody of the cargo of coking coal forming subject matter of the Contract dated 16th February 2017 be handed over to the Petitioner, till the adjudication of the disputes between the parties; and

(e) Pass an order for security of value of the consignment of the Coal forming subject matter of the Contract dated 16th February 2017;

(f) Pass ad interim ex-parte order in respect of prayers (a) to (e) above;

(g) Costs of the present Petition in favour of the Petitioner and against the Respondent."

4. The present petition was moved on 10th April, 2017. And, on the said date it was argued on behalf of the petitioner that the vessel containing cargo / consignment of coking coal which was earmarked for the petitioner was docked at Paradip Port. It was earnestly contended that Notice of Readiness had also been issued and the vessel was ready to discharge the cargo.

5. The learned counsel appearing for the respondent today states that the goods in question (coking coal) were sold to a party outside India; the vessel carrying the goods was never docked at the Paradip Port; and it sailed out of the territorial waters of India on 05.04.2017. He further states that the respondent is a Swiss entity and in terms of the contract between the parties, arbitration is to be conducted under SIAC Rules and English Law is

applicable to the said contract.

6. In view of the above statement that the goods have already been sold and vessel namely MV "Star of Abu Dhabi" has sailed and is no longer in territorial waters of India, the relief as prayed for by the petitioner, cannot be granted.

7. It is further seen that the goods in question are a commodity and therefore petitioner can be adequately compensated by award of damages.

8. The learned counsel for the respondent further states, on instructions, that the respondent will not draw down on the LCs issued to the respondent. In view of the above statement, it will be open for the petitioner to approach its banks for cancellation of the LCs on the strength of this order.

9. It is clarified that all issues are left open.

10. The petition is disposed of.

VIBHU BAKHRU, J

APRIL 17, 2017

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