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

\+ O.M.P. (I)(COMM.) 168/2018 & IAs 5105/2018, 7207/2018, 7208/2018, 10616/2018

STEEL AUTHORITY OF INDIA LTD. ..... Petitioner

Through: Mr.Sanjay Jain, Sr. Adv. with Mr.Sharat Kapoor with Mr.Shrey Kumar, Mr.Yuvraj Sharma, Advs. along with Mr.S.B.Mathur, DGM (Law).

versus

SONAM TRADING FZC ..... Respondent

Through: Mr.Manoj Ohri, Sr.Advocate, with Mr.Ajit K.Singh, Mr.Kumar Sameer and Mr.Drishti Singh, Advocates.
Mr.Samprikta Ghosal, Advocate, for the Applicant-Vizag Seaport Pvt.Ltd.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

% **10.08.2018**

IA 10616/2018

Learned senior counsel for the petitioner prays for leave to withdraw the present application with liberty to file the same before the Arbitral Tribunal, if so advised.

The application is dismissed as withdrawn with liberty as prayed for.

O.M.P. (I)(COMM.) 168/2018 & IAs 5105/2018, 7207/2018, 7208/2018

This petition under Section 9 of the Arbitration and Conciliation Act, 1996 has been filed by the petitioner *inter alia* making the following prayers:

> *"(a) Pass an order that the Respondent be directed to increase the Performance Bank Guarantee and secure the claim amount of the Petitioner which is a subject matter of the dispute in the arbitration by providing security adequate in its value to the satisfaction of the Petitioner until such time of the arbitral proceeding or at any time after the making of the arbitral award and before it is enforced in accordance with the law of the land; AND/OR*
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> *(b) Pass an order that the Respondent be directed to increase the Performance Bank Guarantee amount from US$ 368,453.25 to US$ 1,282,740.79 and to provide a fresh bank guarantee by way of security in the sum of INR 23,41,29,287.40 (in each case with some additional amount to cover reasonable interest thereon as may be determined by this Hon'ble Court) and/or secure the Petitioner's claims by such other means as may be deemed appropriate; AND/OR*
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> *(c) The Respondent be injuncted/restrained from removing the coal from the discharge ports at Vishakapatnam and Haldia, India unless the claims of the Petitioner are secured; AND/OR*
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> *(d) The Respondent be injuncted/restrained from removing the coal from the discharge ports at Vishakapatnam and Haldia, India or permit the Petitioner to sell the coal to third party and deposit the amount in the court in an interest bearing account, pending the arbitration as the Petitioner is incurring additional cost towards warehousing charges which is a substantial amount @ Rs.10,974 w.e.f. 1st March, 2018 on a daily basis so that in the event of an award in favour of the Petitioner, the awarded amount may be recovered from the amount deposited; AND/OR*
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> *(e) Pass ad-interim ex-parte orders in terms of prayer (a) and (b) above during the pendency of present petition; AND/OR*
>
> *(f) Pass such other interim measure of protection as may*

appear to this Hon'ble Court to be just and convenient."

This Court by an Interim Order dated 18th April, 2018, had *inter alia* directed as under:-

"Having considered the above submissions, the respondent is restrained from removing the coal from the Discharge Ports at Visakhapatnam and Haldia, India till the next date of hearing."

During the pendency of the present proceeding, the parties have invoked the Arbitration Agreement and the Arbitral Tribunal is being constituted. The parties have, in fact, jointly nominated Justice Dr.Arijit Pasayat (Retd.) Judge of the Supreme Court as an Arbitrator who I am informed has consented to act as a Sole Arbitrator.

One of the Port where the disputed coal is situated is Vizag Seaport. Vizag Seaport Pvt. Ltd. has filed an application being IA No.7207, *inter alia* contending that due to storage of coal at the Port, it is not only suffering a financial loss but there also lies a huge risk to the Port itself.

Taking note of the urgent situation mentioned in the application by Vizag Seaport Pvt. Ltd., which could not be disputed by the counsels for either side, the following directions are passed:

(i) Parties to have their own agencies to draw samples on 17th August, 2018 at 11.00 a.m. and counter sign the samples drawn before shifting of the coal;

(ii) Vizag Seaport Pvt. Ltd. shall shift the coal to their identified site after samples have been drawn. Vizag Seaport Pvt. Ltd. shall be entitled to receive all costs and other charges for storage, shifting, security, etc., from the sale proceeds of the coal;

(iii) Sale of coal to be decided by the arbitrator;

(iv) Notwithstanding the present interim order under section 9 having been passed, if any party, at any point in time, feels the necessity to seek modification of the same, they will be at liberty to approach the Ld. Sole Arbitrator under Section 17.

(v) As far as Haldia Port is concerned, the Interim Order dated 18th April, 2018 shall continue, however, the parties agree that they shall draw samples in the presence of each other on 24th August, 2018 at 11.00 a.m. Such samples shall be counter-signed by the parties and the representatives of the concerned agencies.

(vi) Eeither party shall be at liberty to seek modification/variation of this order before the Arbitral Tribunal.

In view of the above, the present petition is disposed of binding the parties to the above terms and conditions. All the pleas of either party shall remain open before the Arbitral Tribunal.

The date 13th August, 2018 stands cancelled.

Dasti to both the parties.

NAVIN CHAWLA, J

AUGUST 10, 2018
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