

JPP

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION***

***COMMERCIAL APPEAL (Lodg.) NO. 176 OF 2019
in
COMM. ARBITRATION PETITION (L) NO. 145 OF 2019
with
NOTICE OF MOTION NO. 361 OF 2019***

Ahluwalia Contracts (India) Ltd. ...Appellant/Applicant.

V/s.

Reliance Infrastructure Ltd. and Ors. ... Respondents.

Mr. Mayur Khandeparkar a/w. Ms. Smiti Tewari, Ms. Sonal Alagh,
Mr. Parth Dua and Mr. Satyasrikant V. I/b. Khaitan Legal Associates
for the Appellant/Applicant.

Mr. S.U. Kamdar, Senior Advocate a/w. Mr. Chirag Kamdar, Mr.
Shrey Fatterpekar, Mr. Anupam Dighe, Mr. Kiran Padalkar and Ms.
Ishita Bajaj I/b. India Law Alliance for Respondent 1.
Mr. Akash Menon a/w. Ms. Sukanya Bhaumik for Respondent No.3.

***CORAM : NARESH H. PATIL, C.J. &
N.M. JAMDAR, J.***

DATE : 4 APRIL 2019.

P.C. :-

The Appellant has impugned the order dated 2 April
2019 passed by the learned Single Judge. Mr. Khandeparkar, the

learned Counsel appearing for the Appellant has referred to the grounds raised in the Appeal. It is submitted that ad-interim relief, which was operating, has not been continued by the learned Single Judge, due to which the bank guarantees were invoked by the Respondents herein. Mr. Khandeparkar submits that necessary orders be passed in the interest of the Appellant and the amount received by the Respondent by way of bank guarantee shall be secured. The learned Counsel further submits that they are referring the matter to the arbitrator and in that case an application under Section 9 be converted under Section 17 of the Arbitration and Conciliation Act, 1996 and necessary interim reliefs be pressed before the Arbitrator. The learned Counsel for the Appellant has placed reliance on the judgment of this Court in the case of *Seth Maneklal Mansukhbhai v/s. Jwaladutt Ramesh* (OOCJ Suit No. 1576 of 1941) reported in 1947 Indian Law Reports 378.

3. Mr. Kamdar, learned Senior Advocate for the Respondents submits that on merits there is absolutely no case. According to the terms, the bank guarantees have been invoked. It is for the parties to resort to appropriate proceedings before the Arbitrator and as and when such an application is filed by the Appellant, same would be contested on its own merits. Mr. Kamdar has also placed reliance on the judgment of the learned Single Judge in the case of *Felguera Gruas India Pvt.Ltd. V/s. Tuticorin Coal*

Terminal Pvt. Ltd. And Ors. (Arbitration Petition (L) No. 366 of 2016) reported in 2018 SCC Online Bom 33 and the judgment of the Division Bench of this Court in the case of *Felguera Gruas India Pvt.Ltd. V/s. Tuticorin Coal Terminal Pvt. Ltd. And Ors.* (Commercial Appeal (L) No. 20 of 2018 in Arbitration Petition (L) No. 369 of 2016).

4. Perused the record and submissions advanced before us. As the bank guarantees are invoked, we observe that the invocation is subject to outcome of the proceedings which the Appellant may resort to before the appropriate forum as permissible in law. It is clarified that we have not expressed any opinion on the merits of the issue raised by the contesting parties.

5. The Appeal and the Notice of Motion stand disposed of accordingly.

N.M. JAMDAR, J.

CHIEF JUSTICE