

psv

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
IN ITS COMMERCIAL DIVISION  
COMMERCIAL ARBITRATION PETITION (L.) NO.1043 OF 2018**

|                                      |              |
|--------------------------------------|--------------|
| Oil and Natural Gas Corporation Ltd. | ..Petitioner |
| Vs.                                  |              |
| Jagson International Ltd.            | ..Respondent |

**WITH  
COMMERCIAL ARBITRATION PETITION NO.581 OF 2018**

|                                      |              |
|--------------------------------------|--------------|
| Jagson International Ltd.            | ..Petitioner |
| Vs.                                  |              |
| Oil and Natural Gas Corporation Ltd. | ..Respondent |

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Mr.Navroz Seervai, Senior Advocate with Mr.Subir Kumar for Petitioner.  
Dr.Shashwat Bajpai and Mr.Rajesh Mirchandani for Respondent.

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**CORAM : G.S. KULKARNI, J.**

**DATE : 26<sup>th</sup> JUNE, 2019**

**P.C.:**

1. On 24 June, 2019 this Court had passed the following order:-

“ It is informed that the proceedings as initiated on behalf of the respondent Jagson International Ltd. before the Supreme Court have become infructuous. Learned Counsel for Jagson International Ltd. has made a statement that they would be withdrawing those proceedings as filed before the Supreme Court.

2. In view of the above circumstances, learned Counsel for the ONGC would take instructions to consider withdrawal of both these proceedings.

3. Accordingly, stand over to 26 June, 2019 under the caption “for withdrawal”.

2. Accordingly, today the matters are listed under the caption “for withdrawal”.

3. Commercial Arbitration Petition (L.) No.1043 of 2018 is filed by Oil and Natural Gas Corporation Ltd. (for short, “**ONGC**”) under Section 9 of the Arbitration and Conciliation Act, 1996 (for short, “the Act”) praying for interim measures pending the arbitral proceedings. Commercial Arbitration Petition No.581 of 2018 has been filed by the respondent in the said section 9 petition namely Jagson International Ltd. (for short, “**JIL**”) praying for appointment of an arbitral tribunal.

4. As noted in the Court's order dated 24 June, 2019, the proceedings which arose between JIL against the customs authorities, arising on a demand for payment of customs duty and which ultimately were pending before the Supreme Court are being withdrawn by JIL, in view of the order dated 9 May 2019 passed by the CESTAT being accepted by the Competent Authority of the customs. It was well understood between the parties that this would resolve the disputes between the parties and ultimately there would also be no liability on the petitioner-ONGC for any duty demand, for which it is informed that a notice was also issued by the Customs to the ONGC, in regard to the import in question.

5. Mr.Seervai, learned Senior Counsel for the petitioner-ONGC, in principle would not have any issue, in regard to the withdrawal of these proceedings. However, Mr.Seervai's apprehension is that, as the customs had issued a duty demand notice to the ONGC which is yet to be formally withdrawn, as also, the goods are yet to be re-exported by JIL, and till the goods are re-exported, ONGC is required to be protected either by respondent keeping the bank guarantee valid for a certain limited period till the goods are re-exported or the JIL should undertake to indemnify ONGC in case any duty demand is being pressed by the Customs against the ONGC, in regard to the goods in question.

6. Mr.Jain, learned Counsel for the JIL, responding to the apprehension of Mr.Seervai, would submit that these apprehensions of the ONGC can be addressed. Mr.Jain has tendered a re-export application dated 22 May 2019 as made by JIL (marked “X” for identification), to contend that the procedure for re-export of the goods is already set into motion by JIL. He has also placed on record a letter dated 21 June 2019 (marked “Y” for identification) addressed by the Deputy Commissioner (Customs), Customs House, Pipavav, Tal.Rajula, Dist.Amreli, recording that the Competent Authority has accepted the order dated 9 May 2019 passed by the CESTAT, by its communication dated 19 June 2019. It is his contention that there are no proceedings which can be said to be pending against JIL in respect of any Customs duty demand.

7. In regard to Mr.Seervai's contention of the ONGC to be protected till a formal withdrawal of the demand notices is issued by the customs to the ONGC, and/or in case of any demand or proceedings are initiated against the ONGC by the customs, till the goods are re-exported, learned Counsel for the JIL fairly states that the respondent unconditionally undertakes to indemnify the ONGC in case, any such duty demand is being made against the ONGC. Statement as made by Mr.Jain as made on behalf of the respondent is accepted, as an undertaking to the Court.

8. The above submissions and statements are made by the Counsel, on behalf of the parties, on instructions of their clients' representatives who are present in the Court.

9. Learned Counsel for the parties agree that in the above circumstances, adjudication of these proceedings is not called for and

the proceedings be accordingly permitted to be withdrawn, however, subject to the above observations and orders. Accordingly allowed to be withdrawn subject to the above orders. Disposed of as withdrawn. No costs.

10. At this stage, learned Counsel for the JIL would submit that the bank guarantees are required to be returned forthwith. ONGC shall return the bank guarantees within two days from today.

11. Learned Counsel for the parties also fairly submit that all allegations which are made in the pleadings against each other also stand unconditionally withdrawn.

**[G.S. KULKARNI, J.]**