

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

COMM. ARBITRATION APPEAL NO.398 OF 2019
IN
COMM. ARBITRATION PETITION NO.325 OF 2018

ECI Engineering and Construction
Company Ltd. & Anr.

..Appellants

Versus

Maharashtra State Electricity
Transmission Company Ltd. & Ors.

..Respondents

Mr. Sarosh Bharucha a/w S. M. Algaus, Hafeezur Rehman i/by Sanjay
Sinha, Advocates for the Appellants.

Mr. Abhijit Desai i/by Desai Legal, Advocate for the Respondent
No.1.

CORAM : PRADEEP NANDRAJOG, C.J. &
SMT. BHARATI DANGRE, J.
DATE : 19th NOVEMBER, 2019

P.C.

1] At the outset learned counsel for the Appellants states that he is not making any submissions concerning invocation of the bank guarantees stay of payment whereunder post invocation has been declined by the learned Single Judge vide impugned order dated 3rd May 2019, dismissing Commercial Arbitration Petition No.325 of 2018 which sought an injunction in an application filed under Section 9 of the Arbitration and Conciliation Act, 1996. The grievance is to the interpretation of the settlement agreement between the parties in terms whereof a consent Award was published by the Arbitral Tribunal.

2] The facts are that Respondent No.1 floated two tenders SS1A and SS2A for developing power transmission infrastructure which included construction of sub-station and transmission lines. Performance guarantees and guarantees to secure mobilisation advance was contemplated by the tender documents. Both contracts being awarded to the Appellants they furnished bank guarantees. Dispute arose. The 1st Respondent alleged non-execution of the awarded works to the acts attributable to the Appellants who pleaded that the Respondents were responsible for non-completion of the works. The bank guarantees being invoked and stay being obtained by the Appellants the disputes came to be referred to the Arbitral Tribunal where a settlement agreement was filed and embodying the same the Award was passed. The bank guarantees were extended. The settlement agreement warrants balance works to be executed in terms set out in the agreement.

3] The learned Single Judge was constrained to prima-facie interpret the terms of the settlement because re-invocation of the bank guarantees which were extended was challenged on the plea of fraud.

4] Learned counsel for the parties state that either the dispute on merits would require another round of arbitration or the existing Award to be executed and the executing Court to decide.

5] We do not express any opinion thereon for the reason whether the accord is executory in nature resulting in the consent

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Award being passed or the Award based on the consent is executable has not been argued before us and neither counsel wants to argue the same.

6] As regards the observations of the learned Single Judge prima-facie interpreting the consent terms resulting in the consent Award being passed, we declaring that they arose on account of the plea raised by the Appellants of fraud in invocation of the bank guarantees. The observations are prima-facie view of the learned Single Judge and since it has been rendered in an application under Section 9 of the Arbitration and Conciliation Act, 1996, the view would not be treated as conclusive and binding upon the parties in any further substantive proceedings which the parties may take.

Balaji
G.
Panchal

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by Balaji G.
Panchal
Date: 2019.11.20
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7] So declaring, the Appeal is disposed of.

SMT. BHARATI DANGRE, J

CHIEF JUSTICE