

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 15TH DAY OF FEBRUARY 2019

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

A. No.1261 of 2019

In the matter of Sec 27 Arbitration and Conciliation Act, 1996 and In the matter of Arbitration of disputes between M/s.Gimpex Pvt.Ltd and M/s.Aanchal Cement Ltd (Formerly known as M/s.Kalika Cement Ltd) in relation to 3 High Seas Sale Agreements dated 17.04.12; 27.04.2012 & 27.04.2012 relating to 52163 MT; 20401 MTS & 31500 MTS.

M/s.Aanchal Cement Ltd.,
(Formerly known as Ms.Kalika Cement Ltd)
Rep.by its Managing Director
Mr.ManojGoel
No.23-A, N.S.Road, Suit -5,
7th Floor, Kolkatta 700 001.

...Applicant

-Versus-

M/s.Gimpex Pvt.Ltd.,
Rep.by its Authorised Signatory
Mr.BinodChoudhury
No.282, LinghiChetty Street
Chennai - 600 001.

...Respondent

Application praying that this Hon'ble Court be pleased to direct the Registry to issue Summons/subpoena to the following addresses:

- 1.The Principal Officer
Haldia Port, Dock Complex,
Medinipur,Haldia
West Bengal - 721 635.

2.The Principal Officer
 Paradip Port,
 Jagat Singhpur District
 Paradeep, Orissa - 754 142.

and fix a date to produce the files containing HSS Agreements relating to import and clearance in the name of Kalika Cements Limited, of Portland Cement Clinker from Vietnam:

- I. Unloaded from the Vessel MV LINDOS from 22.04.2012 in Paradip Port.
- II. Unloaded from the Vessel MV SIMGE AKSOY from 03.05.2012 in Paradip Port.
- III. Unloaded from the Vessel MV LINDOS from 30.04.2012 in Haldia Port.
- IV. Unloaded from the Vessel MV SIMGE AKSOY from 10.05.2012 in Haldia Port.

before the Arbitration Tribunal, the Hon'ble Mr. Justice K.Govindarajan, Sole Arbitrator, New No.8, Old No.5, Justice Ramanujam Road, Malaviya Avenue, Shastri Nagar, Chennai - 600 041.

This Application coming on this day before this court for hearing the court made the following order:

This application has been filed with the following prayer:

"To direct the Registry to issue summons/subpoena to the following addresses THE PRINCIPAL OFFICER, HALDIA PORT, DOCK COMPLEX, MEDINIPUR, HALDIA WEST BENGAL 721 635 AND THE PRINCIPAL OFFICER, PARADIP PORT, JAGAT SINGHPUR DISTRICT, PARADEEP ORISSA 754 142."

2. Heard Mr.K.Ravi, learned counsel appearing for the applicant and Mr.A.Abdul Hameed for AAV Parners, the learned counsel appearing for the respondent.

3. In this matter before the learned Arbitral Tribunal consisting sole arbitrator, an order was sought for by the applicant permitting him to approach this Court, by way of this application to issue summons to the two officials mentioned in the prayer to produce the document called HSS agreement [ICC Sale Agreement] with three dates.

4. Pursuant to the said request made by the applicant's side, who is the respondent before the Arbitrator, the learned Arbitral Tribunal passed an order on 14.01.2019 permitting the applicant to approach this Court, seeking for appropriate directions, that is why, the present application has been filed.

5. The learned counsel for the applicant would submit that, if these documents i.e., the HSC agreements relates to the shipment and unloading of the goods from the two ports namely, Haldia Port, Haldia, West Bengal and Paradi Port, Orissa are produced before the Tribunal, the issue raised before the Arbitrator can be smoothly resolved. In this regard, the learned counsel appearing for the applicant drew the attention of this Court on the reasoning given by the learned Arbitrator in giving the permission by order dated 14.01.2019 where, the learned

Arbitrator has stated that, the Tribunal was of the view that the said agreement would be necessary for the appropriate adjudication of the dispute between the parties.

6. Mr.A.Abdul Hameed, learned counsel appearing for the respondent, while expressing his no objection in allowing this application, has made a submissions that, in this matter, though the learned Arbitrator was appointed in the year 2015, so far, half a dozen applications have been filed on the side of the applicant herein, who is the respondent before the Arbitrator. Because of the chain of respective applications since have been moved, the Arbitral proceedings is getting delayed.

7. In this context, he would further submit that, even though permission was given by the learned Arbitrator as early as on 14.01.2019, belatedly, after one month, this application is filed and if again, an application one after another is filed, the very arbitral proceedings would not be over, within the time frame and it would further get delayed. Except this grievance, according to the learned counsel for the respondent, in so far as calling for the said document from the two officials mentioned above, the respondent may not have any serious objection.

8. However, the said allegation made by the learned counsel for the respondent regarding delay has been

strongly refuted by the learned counsel appearing for the applicant.

9. I have considered the said submissions made by the learned counsel for the applicant and the learned counsel for the respondent.

10. Since in the opinion of the Tribunal, the document sought for herein are necessary, to resolve the issue raised between the parties and therefore, a reasonable time has been given by the Arbitral Tribunal to the applicant to approach this Court, I am of the view that the prayer sought for in this application can be allowed.

11. In the result, the following orders are passed:

That the Registry would issue summons/Subpoena to the respective persons/employee since working in the respective ports, whose addresses are given under:

1. The Principal Officer
Haldia Port, Dock Complex,
Medinipur, Haldia,
West Bengal - 721 635.
2. The Principal Officer,
Paradip Port,
Jagat Singhpur District,
Paradeep,
Orissa - 754 142.

The said persons are hereby directed to produce the HSS agreements relating to import and clearance in the name of Kalika Cements Limited of Portland Cement Clinker

from Vietnam in respect of the shipment which has been unloaded at Paradip Port from the Vessel MV LINDOS from 22.04.2012 and from 03.05.2012 respectively and also the goods unloaded at Haldia Port from the Vessel MV LINDOS and MV SIMGE AKSOY from 30.04.2012 and 10.05.2012 respectively, before the Arbitral Tribunal i.e., before Hon'ble Mr. Justice K. Govindarajan, Sole Arbitrator, New No.8, Old No.5, Justice Ramanujam Road, Malaviya Avenue, Shastri Nagar, Chennai 600 041 on 16.03.2019 at about between 10.00a.m. to 11.00a.m.

The above said Subpoena/summons shall immediately be issued by the Registry and the same to be served/transmitted through the concerned District Court having jurisdiction over Haldia Port, Medinipur, Haldia, West Bengal Paradip Port, Jagat Singhpur District Paradip Orissa enabling the officials concerned to appear before the Arbitrator on the date and time mentioned above.

12. With these directions, this petition is ordered accordingly.

WEB COPY

Sd/- R.S.K.J.

15.02.2019

//Certified to be a true copy//

Dated this the day of 2019.

DL:19.02.2019

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.