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

+ **FAO (OS) COMM. 1/2019 & CM APP No.238/2019**

SAVAN GODIAWALA petitioner

Through: Mr.Sandeep Sethi, Sr. Adv. with
Mr.Vaijayant Paliwal, Ms.Stishti
Khare and Mr.Siddharth, Advs.

versus

STEEL AUTHORITY OF INDIA LTD. Respondent

Through: Ms.Anjali Sharma, Mr. Deepak
Bastha and Mr.Abhimanyu Gupta,
Advs.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

% **07.01.2019**

CM APP Nos. 236-37/2019

Allowed, subject to all just exceptions.

CAV. No.6/2019

As counsel for the respondent has entered appearance, caveat stands
disposed of.

FAO (OS) COMM. 1/2019

This intra court appeal impugns the order dated 20.11.2018 passed by
the learned Single Judge whereby the learned Single Judge has dismissed

OMP (I) (Comm.) No.407/2018 filed by Savan Godiawala, (liquidator and on behalf of M/s. Lanco Infratech Ltd.) , under Section 9 of the Arbitration & Conciliation Act, 1996 ('A&C Act', for short) for restraining M/s. Steel Authority of India Ltd., ('respondent', for short) from acting upon termination notice dated 24.09.2018. The appellant had also prayed for restraining the respondent from invoking the performance guarantee for a sum of Rs.50 crores dated 20.01.2014.

M/s. Lanco Infratech Ltd. entered into a coal mining service agreement with the respondent on 23.09.2013 for development and operation of the Tasra Open Cast Mine for a period of 28 years.

M/s. Lanco Infratech Ltd. went into liquidation on 27.08.2018.

It is submitted on behalf of the appellant that Lanco Infratech Ltd. had made a request for assignment of rights in Tasra Open Cast Mine in favour of its subsidiary M/s. Tasra Mining and Engineering Co. Ltd. and vide letter dated 15th March, 2018 the respondent-'SAIL' had communicated its intention to permit assignment. In these circumstances, the respondent should not encash or invoke the bank guarantee. Further M/s Thriveni Earthmovers Pvt. Ltd. have submitted a proposal for acquiring M/s Lanco Infratech Ltd., now in liquidation as a going concern.

The respondent has disputed letter dated 15th March, 2018 on the ground that Mr. S.K. Basak, Executive Director (Collieries Division), SAIL, who had signed the letter, was not authorised to sign and issue this communication. Mr. S.K. Basak has been charge-sheeted for writing the said letter.

The letter dated 15th March, 2018 records that the agreement was to be executed between respondent and Tasra Mining and Engineering Co. Pvt.

Ltd. which agreement was never executed and signed. The appellant accepts that the transaction/assignment between the appellant and M/s. Tasra Mining Engineering Co. Pvt. Ltd. is to not take place. Expression and interest from a third company, namely, Thriveni Earthmovers Pvt. Ltd. to take over M/s. Lanco Infratech Pvt. Ltd. is a different matter and aspect unconcerned and unconnected with the letter dated 15.03.2018. In the aforesaid circumstances, reliance placed by the appellant on letter dated 15th March, 2018 purportedly written on behalf of the respondent becomes inconsequential and irrelevant.

Learned Senior counsel for the appellant then submits that it would be in the interests of the respondent to agree with the proposal given by M/s. Thriveni Earthmovers Pvt. Ltd. We cannot go into the said question by stepping into the shoes of the respondent. Whether or not to accept the proposal is a commercial matter, not for the court to direct and command.

It is accepted that no proposal in this regard has been officially sent by the appellant-liquidator to the respondent.

The question of taking over Lanco Infratech Ltd. by Thriveni Earthmovers Pvt. Ltd. is a subject matter to be decided and examined under the Insolvency & Bankruptcy Code, 2016. It will be open to the appellant to raise all issues and contentions in this regard under the enactment and for the respondent to respond. We express no opinion.

The learned Single Judge, while dismissing the prayer for grant of interim relief, has also rightly referred to Section 14(1) and 41(e) of Specific Relief Act.

No other point or issue has been urged before us.

We do not find any merit in the present appeal and the same is dismissed, with no order as to costs. All pending applications are also

disposed of.

SANJIV KHANNA, J.

JANUARY 07, 2019
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ANUP JAIRAM BHAMBHANI, J.