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IN THE HIGH COURT OF DELHI AT NEW DELHI

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FAO (OS) (COMM) 157/2019 & CM APPL. 30344/2019 (Stay)

M/S SRI ANAND VINAYAK
COALFIELDS LTD.

..... Appellant

Through Ms. Ruchira Gupta & Mr. Anurag
Sharma, Advocates.

versus

M/S INDIAN FARMERS
FERTILISER COOPERATIVE LTD.

..... Respondent

Through Mr. Rajiv Bansal, Senior Advocate
with Ms. Mansi Bajaj, Ms. Parul
Panthi and Ms. Nidhi, Advocates

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

ORDER

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09.07.2019

CM APPLS. 30345-30347/2019 (Exemption)

1. Allowed, subject to all just exceptions.

FAO (OS) (COMM) 157/2019 & CM APPL. 30344/2019 (Stay)

2. This is an appeal under Section 37 of the Arbitration & Conciliation Act, 1996 (hereafter referred to as the "Act") against order dated 15th May, 2019 passed by learned Single Judge in O.M.P. (Comm.) No.46/2019 whereby petition of the Appellant under Section 34 of the Act challenging Arbitral Award dated 14th November, 2018 was dismissed.

3. It is contended by learned counsel for the Appellant that the impugned order dismissing the petition under Section 34 of the Act is liable to be set aside and the award is liable to be set aside as the Arbitral Tribunal travelled outside the four corners of the Agreement/ Work Order between the parties. The Work Order was a Coal Handling and Transportation Contract and did not include any obligation on the part of the Appellant for storage of coal in the Depot. There is no clause in the Work Order regarding storage and safe keeping of the Coal. The Depot where the coal was stored was accessible to both the Appellant and the Respondent and in fact the security of the storage depot was wholly and solely the responsibility of the Respondent. Even after the Respondent discovered shortage of coal, it took no steps to secure the remaining coal which in fact also went missing.

4. On the other hand, learned counsel for the Respondent has contended that impugned judgment dated 15th May, 2019 as well as impugned award dated 14th November, 2018 are perfectly in line with the Work Order and there is no illegality in the same.

5. In the present case, on 25th August, 2007, Respondent herein had issued a Work Order in favour of Anand Commercial Company ('ACC') which was Respondent no.1 in the impugned award whilst the Appellant herein was arrayed as Respondent no.2. In fact, ACC was a sole proprietorship firm, which was later on converted into a company, being the Appellant herein.

6. As per Clause 5.03 of Attachment-I of the Work Order, ACC was required to provide a separate plot for storing 20,000 MT of coal of the Respondent on rent payable by ACC. It was the responsibility

of the contractor that once it had unloaded the coal from the railway rakes, it would be transported either to Respondent's factory at Paradeep directly or to the said plot/ depot and thereafter transported to Respondent's factory. The expression "contractor's depot" in the Work Order expressly placed an obligation on ACC to provide a storage space or a depot for safe keeping of coal. Therefore, the coal stored in the contractor's depot was in the sole custody and charge of the Appellant herein. Provisioning of a plot/ depot was the obligation of ACC, which formed part of the mutual agreement made between the parties. The letters addressed by the Appellant (previously known as 'ACC') to the Respondent from time to time also show that it was the Appellant, who was incharge of the plot/ depot. Clause 5.02 of the Work Order also places an obligation on the Appellant to ensure that no damage, theft or pilferage was caused to the coal stock available with it while the Appellant was incharge. A reference to Clauses 3.00 (c), 3.00(e), 5.02 and 5.03 of Attachment-1 to the Work Order clearly shows that it was the obligation of the Appellant to store coal at the designated plot/ depot, which was taken on rent by it. It has been contended on behalf of the Appellant that as per Orissa Minerals (Prevention of Theft, Smuggling & Illegal Mining and Regulation of Possession, Storage, Trading and Transportation) Rules, 2007 ('Rules'), the storage license was in the name of the Respondent but there is no provision in the Rules, which prohibited the appointment of an agent by the license holder (Respondent) for the custody and security of the coal.

7. A vast quantity of coal including 11661.615 MT of this contract disappeared from the plot/ depot. As referred to above, security of

the coal was the sole responsibility of the Appellant. Clause 5.02 of the Work Order placed an obligation on the Appellant to ensure that there was no theft or pilferage caused to the coal kept in its charge. So, the argument of the Appellant that liability of the Appellant was only confined to transportation and handling is not at all tenable. This argument has been solely raised with a view to wriggle out of its responsibility by the Appellant and is liable to be rejected outright.

8. As noted by the learned Single Judge, even the two reports dated 1st April, 2009 and 3rd August, 2009 generated by the ACC demonstrated that the Appellant was incharge and in custody of the coal stored at the plot/ depot. Learned Single Judge has duly dealt with the issue that sublease arrangement between the Respondent and ACC was for nominal rent only for the purpose of facilitating the issuance of trading license under the Rules. Since, the Appellant was the custodian of the coal, it was rightly held responsible for loss caused to the Respondent on account of theft or pilferage.

9. In view of above discussion, we do not find any infirmity or illegality in the impugned order dated 15th May, 2019 passed by learned Single Judge upholding the arbitral award. Consequently, present appeal as well as pending applications stand dismissed being devoid of merits.

S.MURALIDHAR, J.

TALWANT SINGH, J.

JULY 09, 2019

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