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

Date of Decision: 13th November, 2019

+ **FAO(OS) (COMM) 229/2019**

GX TECHNOLOGY CORPORATION

..... Appellant

Through: Mr. Hiroo Advani, Ms. Mahi Mehta,
Ms. Aastha Jain, Mr. Abhay Singh & Mr. Tariq
Khan, Advs.

versus

DIRECTORATE GENERAL OF HYDROCARBONS..... Respondent

Through: Ms. Maninder Acharya, ASG with
Mr. Jatinder Cheema, Mr. Akshat Razdan &
Mr. Viplav Acharya, Advs.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT

D.N. PATEL, CHIEF JUSTICE (ORAL)

1. This appeal has been preferred challenging the order passed by the learned Single Judge in IA No.8658/2019 in O.M.P. (COMM) 445/2018. The order of the learned Single Judge dismissing the aforesaid IA preferred by this appellant is dated 5th July, 2019 (Annexure P-1 to the memo of this appeal).

FACTUAL MATRIX

- An agreement was entered into between Union of India and this
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appellant in the year 2005. There were several clauses in the said agreement which prohibits selling of data and survey map etc.

- Second agreement was entered into between the parties in the year 2008. After entering into second agreement, Union of India came to know that this appellant grossly violated the terms of agreement by selling away geo seismic certificate and maps etc. to other companies and, hence, agreement of the year 2008 was terminated.
- As per the arbitration clause, arbitration proceedings were initiated. Arbitral Award was given on 26th July, 2018 which was in favour of GX Technology Corporation (appellant).
- Being aggrieved by the Arbitral Award dated 26th July, 2018, Union of India preferred a petition under Section 34 of the Arbitration and Conciliation Act, 1996 being O.M.P. (COMM) 445/2018 before the learned Single Judge of this Court along with stay application being IA No.14668/2018.
- Notice was issued and the parties were heard by the learned Single Judge. An order dated 1st November, 2018 was passed with consent of the parties which reads as under:

“I.A. Appl. No. 14669/2018 (for exemption)

1. Exemption allowed, subject to just exceptions.
I.A. stands disposed of.

LA. No. 14668/2018 (for stay)

2. Notice.
3. Counsel for the respondent accepts notice.
4. Till the final disposal of the present petition it is agreed as under:-
 - (i) Any data which was lying or was available to the respondent under the 2005 Agreement entered into between the parties, though the respondent states that all such data has already been delivered by it to the petitioner, on behalf of the

respondent it is stated that such data received under the 2005 Agreement will be deposited by them in a sealed envelope in this Court. A copy of the data in a sealed envelope will also be handed over to the petitioner under the signatures of the authorised representatives of both the petitioner and the respondent. The respondent will not use any data received by it under the 2005 Agreement for any commercial purpose of any sale or assignment or transfer for consideration, and on behalf of the respondent it is stated that it is not doing so.

(ii) The amount which is lying in the escrow account on account of the interim orders passed in the arbitration proceedings will continue to remain in the escrow account subject to final orders which are to be passed in the main petition under Section 34 of the Arbitration and Conciliation Act, 1996.

(iii) The respondent shall not in any manner sell, transfer, assign or in any manner use the data which is available to it under the 2008 Agreement except upon consent of the petitioner with respect to the customer to whom such data has to be sold or assigned or transferred, etc. and additionally the price which will be payable for the data under the 2008 Agreement will be a price which would be consented to by the petitioner. When such a sale/transfer is made of the data under the 2008 Agreement the said amount will also be deposited in the escrow account as detailed hereinafter.

(iv) In case any data available to the respondent under the 2008 Agreement has been sold or transferred or assigned or in any manner transferred for consideration or other commercial reasons to any third party from the date of passing of the impugned Award on 26.7.2018 till date, then such amount received by the respondent will be deposited as per the modalities detailed in the interim order in the arbitration proceedings by putting the amount in the Escrow Account No. 37548370113, Account Name-DGH GXT ESCROW ACCOUNT, Account type; current account, IFSC Code: SBIN0050203, BSR Code: 0025203, MICR Code: 110002742, SWIFT Code: SBININBBP24.

5. LA. No. 14668/2018 is accordingly disposed of in terms of the aforesaid directions.

O.M.P. (COMM) 445/2018

6. *List the main petition under Section 34 of the Arbitration and Conciliation Act for arguments on 14th December, 2018.*

7. *Parties are noticed that with respect to all arguments they propose to raise in the main petition under Section 34 of the Arbitration and Conciliation Act all necessary pleadings, documents, etc. as available in the arbitration proceedings shall be positively filed by them in this Court within a period of two weeks from today, and this order is passed so that the bulky arbitration record need not be called by this Court.”*

- Thereafter this present appellant had moved an application being IA No.74/2019 in O.M.P.(COMM) 445/2018 for the modification of the order dated 1st November, 2018. This IA was **unconditionally withdrawn** by this appellant and the same was accordingly disposed of as not pressed by the learned Single Judge on 8th January, 2019.
- Thereafter written submissions were filed by this appellant in O.M.P.(COMM) 445/2018.
- One more IA was preferred by this appellant being IA No.8658/2019 for modification of the IA No.74/2019 and the same was dismissed by the learned Single Judge *vide* order dated 5th July, 2019 (Annexure P-1). Being aggrieved and dissatisfied by the aforesaid order dated 5th July, 2019 in IA 8658/2019 in O.M.P.(COMM) 445/2018, the present appeal has been preferred by this appellant.

2. Having heard learned counsel for both the sides and looking to the facts and circumstances of the case, it appears that IA No.8658/2019 was preferred for the modification of the order dated 1st November, 2018, which is not permissible in law as order dated 1st November, 2018 was passed with the consent of the parties. The learned Single Judge is hearing the main

petition being O.M.P.(COMM) 445/2018. Written submissions have already been filed by this appellant and the next date of hearing of the O.M.P.(COMM) 445/2018 is 19th November, 2019. Hence, we see no reason to entertain this appeal and to modify the order passed by this Court in IA No. 8658/2019.

3. No error has been committed by the learned Single Judge while deciding IA No.8658/2019 *vide* order dated 5th July, 2019.

4. Much has been argued by learned ASG appearing for Union of India that the data collected by this appellant has been sold away to EXXON and as per order dated 1st November, 2018 in IA No.14668/2018 in O.M.P.(COMM) 445/2018, the said amount is to be deposited by this appellant in Escrow account whereas this appellant is disputing such deposition of the amount on the plea that main matter under Section 34 of the Arbitration and Conciliation Act, 1996 is pending before the learned Single Judge.

5. We are abstaining from analysing the facts, but suffice it will be to say that earlier IA No.74/2019, preferred by this appellant for modification of the order dated 1st November, 2018 was withdrawn unconditionally and hence, second application being IA No.8658/2019 is not tenable at law. This aspect of the matter has been properly appreciated by the learned Single Judge while dismissing IA No.8658/2019 *vide* order dated 5th July, 2019. We are in full agreement with the reasons given by the learned Single Judge and hence see no reason to entertain this appeal and the same is dismissed with no order as to costs.

C.M. No. 41949/2019

6. In view of the final order passed in FAO (OS)(COMM) No.229/2019, this application stands disposed of.

CHIEF JUSTICE

C.HARI SHANKAR, J

NOVEMBER 13, 2019
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