

OD 2

APO/74/2020
in
CS/59/2020
IA No:GA/3/2020, GA/4/2020

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

BALASORE ALLOYS LIMITED
Vs.
MEDIMA LLC

BEFORE:
The Hon'ble JUSTICE SANJIB BANERJEE
AND
The Hon'ble JUSTICE ARIJIT BANERJEE
Date: December 22, 2020

Appearance:
Mr. S. N. Mukherjee, Sr. Adv.
Mr. Shaunak Mitra, Adv.
Ms. Nandini Khaitan, Adv.
Ms S. Singh, Adv.

Mr. Rishad Medora, Adv.

The Court: The appeal arises out of the refusal of an ad interim order to arrest arbitral proceedings initiated by the respondent herein in the United Kingdom.

There is no dispute that there were several agreements between the parties for supply of goods which contained an identical arbitration clause that provided for the disputes to be resolved by arbitration to be held in Kolkata. However, there was a master agreement of March 31, 2018 which governed the relationship between the parties and has now been found to be all-encompassing by a judgment and order of the Supreme Court passed on September 16, 2020 in proceedings under Section 11 of the Arbitration and Conciliation Act, 1996 and a Special Leave Petition carried by the present appellant against the refusal in this appeal of an ad interim order to restrain the arbitration in the United Kingdom.

The Supreme Court order of September 16, 2020 sets out the arbitration clauses in the several supply agreements between the parties and also sets out the arbitration agreement at clause 23 of what is described to be the “umbrella agreement” by the Supreme Court at paragraph 7 of the judgment.

The Supreme Court held, inter alia, at paragraph 12 of the judgment that the disputes between the parties would be governed by the main agreement and the arbitration clause governing the same.

As a consequence, the primary ground urged by the appellant herein to the effect that it is the arbitration agreement that provides for Kolkata as the venue that would bind the parties, is no longer available.

In the light of such issue being conclusively decided against the appellant, such primary ground can no longer be urged in this appeal.

Since it does not appear that any high case of fraud or mala fides has been made out and the agreement dated March 31, 2018 with the arbitration clause contained therein has been upheld by the Supreme Court, nothing survives in this appeal.

Accordingly, APO No.74 of 2020 together with the pending applications being GA No.3 of 2020 and GA No.4 of 2020 are disposed of by dismissing the appeal.

There will be no order as to costs.

(SANJIB BENERJEE, J.)

(ARIJIT BANERJEE, J.)