Ashwini

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMM ARBITRATION PETITION NO. 1077 OF 2019

Mahaguj Collieries Ltd ...Petitioner
Versus
Adani Enterprises Ltd ...Respondent

Ms Sneha Phene, *with Ms Janvi Manek, Mr Jayendra Kapadia, Mr Fozan Lakdawala, i/b Little & Co., for the Petitioner.*
Mr Ashishchandra Rao, *with Mr Dhruv Jain, i/b Economic Laws Practice, for the Respondent.*

CORAM: G.S. PATEL, J.
DATED: 17th February 2020

PC:-

1. The Petition is under Section 27 of the Arbitration and Conciliation Act 1996. The parties are in arbitration before a three-member tribunal. I am informed that the evidence before the tribunal is complete. What is required is the original of one document or set of documents relating to one particular tax certificate. The request is for a direction to the Deputy Commissioner, Office of Assistant/Deputy Commissioner of Income Tax, DCIT/ACIT (TDS), Circle Ahmedabad for a production of this document directly before the Tribunal.

2. The next session before the Tribunal is day after tomorrow, i.e. 19th February 2020. It is not possible to have a summons issued at such short notice. The immediately next session is scheduled for 2nd, 3rd and 4th March 2020 and, I will, therefore, issue a summons returnable before the Tribunal on that date.

3. Briefly stated, in the arbitration the present Respondent (the Claimant in arbitration), through the 2nd witness CW2 agreed to produce a certificate said to have been issued by the Income Tax Department in respect of a lower tax deduction at source for amounts purportedly payable to the Project Management Consultant or PMC. On 12th December 2018, the Advocates for the Respondents/Claimants gave to the Advocates for the present Petitioners a copy of this document. This was a certificate ostensibly dated 6th March 2013 labelled as Certificate No. 1113BR502C and said to have been issued under Section 197 (1) of the Income Tax Act 1961 by the Deputy Commissioner, Office of Assistant/Deputy Commissioner of Income Tax, DCIT/ACIT (TDS), Circle Ahmedabad authorizing one Adani Mining Private Limited to deduct income tax at the rate of 0.25% for amounts payable to the Project Management Consultant. It is the genuineness of this document that is being contested or disputed in the arbitration.

4. The Petitioner filed an application for complete particulars, a certified copy and all supporting documents relating to this certificate. Adani Enterprises (the Claimant in arbitration) filed a

Reply to this application. On 27th February 2019, the Tribunal allowed that application.

5. It seems that on 17th May 2019 the Petitioner received by email from the Deputy Commissioner of Income Tax (TDS), Ahmedabad a document purporting to be a certified copy of the certificate along with a letter by the office of the ACIT, (TDS) Circle Ahmedabad addressed to the PMC and which was dated 18th April 2019. However this did not have a copy of the application made by the PMC to the Assessing Officer for issuance of a certificate of lower deduction of Income tax or any associated documents as requested by the Petitioner.

6. It is in these circumstances that the present Petition is filed.

7. The prayer in the petition reads thus:

> "a) This Hon'ble Court may be pleased to issue summons to the Deputy Commissioner, Office of Assistant/Deputy Commissioner of Income Tax, DCIT/ ACIT (TDS), Circle Ahmedabad for the purpose of producing directly before the Arbitral Tribunal at the next hearing, a certified copy of the Application along with enclosures and all documents submitted by the Respondent or PMC Projects (India) Private Limited, made for issuance of the purported "Certificate No. 1113BR502C" purportedly issued to "Adani Mining Private Limited" under Section 197 (1) of the Income Tax Act, 1961, all the records in relation to any such application and the orders passed thereon, if any."

8. I can see no reason to deny relief.

9. The petition is made absolute in terms of prayer clause (a).

10. The summons is to be issued to the authority in question namely Deputy Commissioner, Office of Assistant/Deputy Commissioner of Income Tax, DCIT/ACIT (TDS), Circle Ahmedabad for production of a certified copy of the application along with enclosures and all documents submitted by Adani Enterprises Limited or Adani Mining Private Limited or the Project Management Consultant, i.e. Project (India) Private Limited for issuance of Certificate No. 1113BR502C and said to have been issued under Section 197 (1) of the Income Tax Act to Adani Mining Private Limited.

11. To leave no room for controversy, I am clarifying that what is required is not merely the production of the certificate nor merely production of an application but **all** documents in relation to that application, including a certified copy of the certificate, i.e. the entire record and every single document related to the application and the certificate in the files of the DCIT/ACIT. The document is not exempt from disclosure, and the Respondent is to make no application to the Income Tax Authorities for withholding or not producing the entire record.

12. The production will be effected before the arbitral tribunal by an officer duly authorized by the Office of the Assistant/ Deputy

Commissioner of Income Tax so that it is produced from proper custody. This may be treated, therefore, as a summons *duces tecum*.

13. The production is to be on 2nd March 2020 at 4.00 pm at the Mumbai Centre for International Arbitration, 20th Floor, Express Towers, Ramnath Goenka Marg, Nariman Point, Mumbai 400 021.

14. The Petition is disposed of in these terms. No costs.

(G. S. PATEL, J)