

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **25.10.2021**

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

Arb Appln.No.272 of 2021

in

A.No.231 of 2020

JSW Minerals Trading Private Limited
Rep. by Mr.Jayanta Sinha
Jindal Mansion, 5A
Dr.G Deshmukh Marg, Mumbai City
Mumbai, Maharashtra - 400026

... Appellant

Vs.

1.LSS Ocean Transport DMCC
Rep. by its Constituted Singnatory,
Having its registered office at Unit #2708
Jumeirah Business Centre 5 Cluster W Dubai
United Arab Emirate

2.K.I. (International) Limited
Rep. by its Directorr
Having its registered office at
#664 T.H.Road, Tondiarpet
Chennai - 600081

3.Krishnapatnam Port Company Limited
1st Floor, 48-9-17, Dwarakanagar,
Visakhapatnam - 530016
Andhra Pradesh, India

4.The Deputy Commissioner of Custom
Krishnapatnam Custom House
Muthukar, Krishnapatnam Port
Nellore, Andhra Pradesh

5.Asta Lingam Times Trading Co.
No:12, Royan Kottai Street,
Kanchipuram - 631502,
Tamil Nadu, India

... Respondents

PRAYER: Judge Summons filed under order XIV Rule 8 of Original Side Rules Read with Section 9(1)(ii)(e) of Arbitration and Conciliation Act, 1996 to recall its earlier order bearing A.No.231 of 2020 dated 16.12.2020 in respect to Cargo under B/L.No.35 and cancel the auction sale of the cargo under B/L.No.35.

For Appellant : M/s.Amitava Majumdar for
M/s.Deepika Sundaram

For Respondents : M/s.Sivamohan

JUDGMENT

The above application is filed for recalling the order dated 16.12.2020 in A.No.231 of 2020 in respect of the cargo covered under Bill of Lading No.35 and cancel the auction sale conducted in respect of Bill of Lading No.35.

2. The applicant who is a third party to the proceedings has moved this application stating that the coal which was transported by the 1st respondent (owner of the Vessel) and chartered by the 2nd respondent was being transported for the ultimate use of the applicant herein.

3. The applicants would submit that they are not aware of any of the proceedings pending before this Court, and it is only, on or about 21.01.2020 that they became aware of the order dated 16.12.2020 wherein the 4th respondent had been directed to take steps to auction the cargo covered under Bill of Lading No.35 and from out of the proceeds thereof pay the custom duty, port charges and facilitate the sale of the cargo under Bill of Lading No.36 to the 5th respondent who had purchased the

same in an auction conducted by the Advocate Commissioner. The applicant would seek to have the order recalled.

4. A reading of the affidavit filed in support of the said petition does not spell out the interest of the applicant in the said proceedings except for stating that the 2nd respondent had chartered the coal for the ultimate use of the applicant.

5. The applicant had moved the application at this belated stage contending that they had come to know about the proceedings only on 22.01.2021.

6. Though the respondents have not filed their respective counter they have appeared before the Court and made their submissions. Heard the learned counsels and perused the records.

7. A reading of this Court's order dated 16.12.2020, which is now sought to be recalled, would show that the applicant herein was very

much aware of the proceedings. In paragraph 10 of the said judgement this Court has observed as follows:

10. Mr.Siva Mohan, learned counsel, who appears for the 2nd respondent would submit that the coal had been purchased for a sale to M/s.JSW Minerals Trading Pvt. Ltd., who had taken delivery of the coal covered under 31 Bill of Entries and it is only one Bill of Entry covering a total quantity of 5,000 M.T., of coal that was not cleared due to financial crisis. However, he would admit that M/s.JSW Minerals Trading Pvt., Ltd., who is aware about the auction purchase has not come forward to stake a claim of the remaining 5,000 M.T., of coals. In these circumstances, this Court is passing the following order: "

8. The 2nd respondent has chartered the coal for the ultimate benefit of the applicant. Therefore, it is clear that the applicant despite

having knowledge about the proceedings had not sought to have themselves impleaded, though they contend that the coal had been purchased for their ultimate use. That apart, having cleared the coal covered under 31 bill of entries it was only in respect of one bill of entry covering a quantity of 5000 metric tonnes of coal that the applicant had not cleared the same. The reason which was given by the learned counsel who appeared for the 2nd respondent was that the applicant was going through a financial crisis. The applicant therefore cannot now turn around and state that they were unaware about the same.

9. Pursuant to orders of this Court the Advocate Commissioner has also deposited the amount received from the auction purchasers after deducting therefrom the amount due towards custom duties and demurrage charge. A sum of Rs.16,50,719/- has been deposited on 21.09.2021. The remaining 2500 metric tonnes of coal has also sold by the customs authority in keeping with the order of this Court dated 16.12.2020 and after deducting the custom duty and demurrage charges a sum of Rs.28,02,500/- has been deposited to the credit of this Court

application.

10. The applicant has not made out any reason whatsoever for recalling the order particularly when the only reason put forward is their lack of knowledge which by reason of paragraph no.10 of the order dated 16.12.2020 appears to be a false statement. In these circumstances the application is dismissed.

Sd./-P.T.A.J
25.10.2021

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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JJ 10/11/2021