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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved On : 03.06.2020
Judgment Pronounced On : 04.06.2020

FAO (OS) (COMM) 61/2020

JINDAL STEEL & POWER LTDAppellant

versus

**STATE TRADING CORPORATION OF INDIA
LTD. & ORS.**Respondents

Advocates who appeared in this case:

For the Appellant : Mr. Gopal Jain, Senior Advocate with Mr. Rajiv Nayar, Senior Advocate with Mr. Saket Sikri, Mr. Sumit Attri, George Varghese, Ms. Nikitha Shenoy and Mr. Siddhant Sharma, Mr. Kartik Nayyar, Advocates

For the Respondents : Mr. Tarkeshwar Nath, Advocate with Mr. Jeyakumar, Director for R-1

CORAM:
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL
HON'BLE MR. JUSTICE TALWANT SINGH

JUDGMENT

TALWANT SINGH, J. (via Video Conferencing)

1. The present appeal has been filed by M/s. Jindal Steel & Power Limited (hereinafter called Appellant) praying for setting aside the impugned order dated 29 of April 2020 passed by the Ld. Single Judge

in OMP (I) COMM 89 / 2020 titled “Jindal Steel & Power Limited vs. STC & Others” by which the interim application under Section 9 of the Arbitration and Conciliation Act, 1996 was taken up for hearing and the prayer for ad-interim relief was declined in the following words:

“26. In view of the above submissions, I may say that a) the respondent No.1 had not exhibited any intention to invoke the PBGs; b) the parties were ad-idem on continuation of the PBGs till the contract was over i.e. till on expiry of the guarantee period; c) even the conduct of the petitioner in extending the PBGs at least seven times prior, would indicate such intention; and d) the CG or the PDCs as offered cannot be considered to be an alternative for the PBGs; and e) a bare perusal of the terms and conditions of the agreement dated 24.09.2014 as also of the PBGs would only show these PBGs need to be continued till the term of the agreement is over. Accordingly, no relief as sought for regarding release of PBGs can be granted. Thus, while directing the petitioner to extend the PBGs till the disposal of this petition and further directing respondent No.1 not to encash / invoke it till such time, this petition be listed before the Roster Bench for directions on 15.07.2020.”

2. Notice of the appeal was issued to the respondents. Part arguments heard. At this stage both the contesting parties agree that as per the Associateship Agreement dated 24th September, 2014, vide clause number 19, the disputes between Appellant and Respondent No.1 (STC) are to be adjudicated by way of arbitration as per Rules of

Indian Council of Arbitration (ICA). Clause 19 of the Associateship Agreement is reproduced hereunder:

“19. Settlement of Dispute-Arbitration and Governing Law

All and any dispute or difference whatsoever arising between the parties out of or relating to the construction, meaning, scope, operation or effect of this contract or the validity or the breach thereof shall be settled by arbitration in accordance with the Rules of Arbitration of the Indian Council of Arbitration and the award made in pursuance thereof shall be binding on the parties. Indian laws shall be applicable with venue being at New Delhi.

JSPL acknowledges and agrees that the Arbitration between STC and foreign buyer (as per terms of the Foreign Contract) will be referred to ICC, Singapore and shall be held under foreign laws. However, STC shall appoint an arbitrator under intimation to JSPL for foreign arbitration.”

3. The present dispute has been raised under the Arbitration & Conciliation Act, 1996. The main objectives of the Arbitration and Conciliation Act, 1996 are to make provision for an arbitral procedure which is fair, efficient and capable of meeting the needs of the specific arbitration; to provide that the arbitral tribunal gives reasons for its arbitral award; to ensure that the arbitral tribunal remains within the limits of its jurisdiction; to minimise the supervisory role of courts in

the arbitral process and to provide that every final arbitral award is enforced in the same manner as if it were a decree of the court.

4. Learned Senior Counsel appearing for the Appellant has requested that a retired Ld. Judge, who is on the panel of ICA, may be appointed as an Arbitrator so as to save time as the Appellant is likely to suffer irreparable loss due of delay in adjudication of the interim relief claimed by it as the ICA may take a long time in finalising the name of the Arbitrator. Ld. Counsel for Respondent No.1 submits that STC is ready to submit to the jurisdiction of the ICA but the appointment of Arbitrator should be left open at the discretion of ICA as per its Rules.

5. The underlining principle of the Arbitration & Conciliation Act, 1996 is to strive for efficient and expeditious disposal of disputes between the parties by a forum of their own choice. Keeping this principle in view and considering urgency of the matter as well as the fact that if ICA takes unduly long time in appointing the arbitrator, it will defeat the purpose of approaching the forum and in the meantime the purpose to set the adjudication mechanism in motion may become redundant, we think it proper to name a retired Ld. Judge already on

the panel of ICA, as the Arbitrator in the present case. Accordingly, we order as under:

- A. We hereby appoint Justice Ms. Reva Khetrapal, a retired Judge of this Court, who is on the approved panel of ICA, as the Arbitrator to adjudicate the dispute between Appellant and Respondent No.1.
- B. It is hereby directed that the Appellant shall approach ICA within one week and file the Petition/Application raising dispute regarding Bank Guarantees / Performance Bank Guarantees or any other related dispute covered under clause 19 of the Associateship Agreement dated 24.09.2014.
- C. Appellant shall deposit with ICA the requisite fees and documents as per Rules and get the cause registered.
- D. ICA shall complete its formalities within a week thereafter and refer the matter to Justice Ms. Reva

Khetrapal, retired Judge of this Court and panel member of ICA for adjudication.

- E. The Ld. Arbitrator shall adjudicate the dispute within 3 months from the date on which the matter is referred to her after giving both the parties right of hearing as per Rules of ICA.
- F. Both the parties are at liberty to move applications for interim relief before the Ld. Arbitrator, which shall be decided expeditiously.
- G. The entire arbitration proceedings be conducted as per the rules of ICA.
- H. Ld. Arbitrator shall decide the disputes on the basis of pleadings/documents/ evidence placed before her and without getting influenced by observations made by Ld. Single Judge in order dated 29th April 2020 or in any other order passed by Ld. Single Judge.

6. In view of the above, the present appeal as well as the OMP (I) COMM 89 of 2020 pending before Ld. Single Judge are hereby disposed of.

7. Copies of this order be sent to Ld. Counsel for parties, Indian Council of Arbitration (ICA) and Justice Ms. Reva Khetrapal, retired Judge of Delhi High Court (email id - Justicekhetrapal@gmail.com, Mobile No. 9871300030) by electronic means. Copy of the order be also uploaded on the website of this Court.

8. No order as to costs.

TALWANT SINGH
(JUDGE)

SIDDHARTH MRIDUL
(JUDGE)

JUNE 04, 2020
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