

C.O. 1176 of 2021

Damodar Valley Corporation
Versus
Mackintosh Burn Limited

(VIA VIDEO CONFERENCE)

Mr. Ratnanko Banerjee,
Ms. Vineeta Meharia,
Mr. Amit Meharia,
Mr. Santanu Chatterjee,
Ms. Urmila Chakraborty,
Ms. Paramita Banerjee,
Ms. Subika Paul

...for the Petitioner.

Mr. Arnab Chakraborty

...for the Respondent.

The respondent in an arbitration proceeding has preferred the instant application under Article 227 of the Constitution of India challenging the orders dated May 12, 2021 and May 16, 2021 passed by the Presiding Arbitrator and a Co-Arbitrator in Arbitration Case No. ARB/MBL-DVC/2018-19.

By the orders impugned, the prayer of the petitioner for making oral submissions/arguments by physical/virtual mode was rejected.

Mr. Banerjee, learned senior advocate for the petitioner drew the attention of this court to several orders passed by the Arbitral Tribunal and submitted that though the Arbitral Tribunal initially allowed the petitioner to make their arguments either physically or through virtual mode but by the subsequent orders

directed closure of the arguments and permitted the petitioner to file only their written notes of argument. Mr. Banerjee submits that the Arbitral Tribunal has deprived the petitioner of their right of oral hearing when the petitioners have specifically prayed for making oral submission before the Arbitral Tribunal. Mr. Banerjee further drew the attention of the court to several orders by which the claimants were permitted to make oral submissions through physical mode before the Arbitral Tribunal.

Mr. Banerjee thus submits that the principles of natural justice has been violated in the instant case.

Mr. Chakraborty, learned advocate appearing for the claimant/opposite party herein also placed reliance upon several orders of the Arbitral Tribunal to show that the Arbitral Tribunal gave opportunity to the petitioner herein to file their written notes of argument. Mr. Chakraborty submits that the Arbitral Tribunal will decide the matter after taking into consideration the written submission of the parties. Thus, Mr. Chakraborty submits that the petitioner herein cannot be said to have been prejudiced in any way by the action of the Arbitral Tribunal. However, in course of his submission, Mr. Chakraborty did not dispute the fact that the claimants were given the opportunity of oral hearing. He however, submits that the Tribunal directed to decide the matter to be decided on the basis of the written submission made by the petitioner herein in view of the ongoing pandemic. However, Mr. Chakraborty did not raise any objection

against an opportunity of oral hearing to the petitioner on condition that such oral hearing has to be only through virtual mode in view of the ongoing pandemic.

I have heard the learned advocate for the parties and perused the materials on record. It does not appear from the record that the petitioner herein has agreed that no oral hearing is to be given to the petitioners. Furthermore, when the claimants had made oral submission physically before the Arbitral Tribunal, the petitioner cannot be deprived of the right to make oral submissions before the Arbitral Tribunal.

In my view justice would be subserved if an order is passed directing the Arbitral Tribunal to fix dates of oral hearing of the respondent/petitioner herein at the earliest through virtual mode and to dispose of the same as expeditiously as business of the Arbitral Tribunal shall permit.

It has been uniformly submitted by the learned advocate for the parties that the time limit for completion of the Arbitration Proceedings after the Arbitral Tribunal entered upon the reference which expired in the meantime stood automatically extended by the orders passed by the Hon'ble Supreme Court of India in *Suo Motu Writ Petition (Civil) No (s).3/2020*.

This court accordingly directs that the parties will be

at liberty to apply before the Arbitral Tribunal within a period of two weeks from date for fixing the dates of hearing of the respondent/petitioner herein. Upon such approach being made, the Arbitral Tribunal shall fix the dates of hearing at the earliest.

Needless to mention that the hearing shall be only through virtual mode as agreed by the parties.

The Arbitral Tribunal is directed to dispose of the Arbitration Case No. ARB/MBL-DVC/2018-19 as expeditiously as the business of the Tribunal shall permit and without granting any unnecessary adjournment to either of the parties.

C.O. No. 1176 of 2021 is disposed of with the above directions thereby setting aside the impugned orders.

(Hiranmay Bhattacharyya, J.)