

ODC-9

ORDER SHEET

AP 25 of 2016

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

GODREJ PROJECTS DEVELOPMENT LTD.
VS
SIMOCO TELECOMMUNICATIONS (SOUTH ASIA) LTD. AND ANR.

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 24th September, 2021.

[Via video conference]

Appearance:

Mr. Arindam Banerjee, Adv.

Mr. Debdut Mukherjee, Adv.

Miss Pritha Basu, Adv.

Mr. Avishek Chatterjee, Adv.

Mr. D. Chakraborty, Adv.

Mr. Rajarshi Dutta, Adv.

Mr. Avirup Chatterjee, Adv.

The Court : By the order dated 22nd September, 2021, counsel had been requested to explore the possibility whether the disputes before this Court can be adjudicated by the Arbitral Tribunal.

Learned counsel appearing for the respondent no. 1, who is also the respondent no. 1 before the Arbitral Tribunal, places a recent order of the Supreme Court in Civil Appeal No. 5700 of 2021 dated 14th September, 2021 (*Arcelor Mittal Nippon Steel India Ltd. vs. Essar Bulk Terminal Ltd.*). According to counsel, the Supreme Court has considered the relevance of Section 9(3) of The Arbitration and

Conciliation Act, 1996 and has held, inter alia, that proceedings in Section 9 before the Court can be transferred to the Tribunal provided the Tribunal has the power to adjudicate the dispute in an application under Section 17 of the Act.

The resistance to the present petition being transferred to the Tribunal as expressed by learned counsel appearing for the petitioner before the Court, who is also the claimant in the arbitration, is that orders have been passed by the Court which show that the Court has gone into the merits of the matter. It is also submitted that the arbitration is at an advanced stage where arguments have commenced on behalf of the parties.

Upon hearing learned counsel appearing for the parties, this Court is of the view that the Arbitral Tribunal having been constituted by an order passed in a Section 11 application on 19th July, 2016, Section 9(3) of the Act would come into play. Under the said provision, once the Arbitral Tribunal has been constituted, the Court shall not entertain any application for interim reliefs under Section 9(1) unless the Court finds that circumstances exist which may not render the remedy provided under Section 17 efficacious. This was precisely the point which was considered by the Supreme Court in *Arcelor Mittal* including the meaning and purport of the word “entertain” in Section 9(3) of the Arbitration Act. On a combined reading of Sections 9 and 17, the Supreme Court held that once an Arbitral Tribunal is

constituted, the Court would not entertain or apply its mind to an application for interim protection unless the remedy under Section 17 is inefficacious. The Court was pleased to add that the bar of Section 9(3) would not operate once an application has been entertained but preserved the discretion of the Court as to whether the matter can be transferred to the Tribunal.

Therefore, the question is whether the Court has applied its mind to the merits of the present arbitration petition. By an order passed on 16th May, 2016, of a learned Single Judge the petitioner was given liberty to take steps with regard to the deed of revocation with the observation that all such steps would abide by the result in the arbitration petition. The Division Bench by its order dated 5th October, 2016, directed the respondent (the appellant before the Division Bench) to apply for permission from the Urban Development Department and return to the Trial Court for appropriate orders subject to the leave granted by the said Department. The contention of counsel who opposes the prayer for transfer is that the respondents were directed to come back to the Trial Court for appropriate orders. This contention is not found to be acceptable since the primary relief in the petition, namely, restraining the respondent no. 1 from giving any effect to a deed of revocation dated 10th October, 2015 is already a prayer in the statement of claim filed by the petitioner before the Tribunal. The petitioner can therefore urge this prayer before the

Tribunal including by way of an application under Section 17 of the Act.

This Court is also of the view from the orders passed in the petition that the Court has entertained any serious or disputed question of fact which would persuade the Court to be in seisin of the matter. There is, accordingly, no impediment in transferring the matter to the Arbitral Tribunal in accordance with Section 9(3) of the Act and the recent decision of the Supreme Court in *Arcelor Mittal*.

AP 25 of 2016 is, accordingly, disposed of with a request to the learned Arbitral Tribunal to consider all the prayers made herein and consider the same upon a new application filed by the petitioner or otherwise.

The parties shall be at liberty of bringing any other documents, if they so wish, before the Tribunal and seek appropriate orders.

The petitioner shall be at liberty of seeking appropriate prayers in respect of extension of time to apply before the concerned department as sought for by the petitioner in Court today. Any order of injunction passed by this Court shall remain until further orders are passed by the Tribunal on the subject matter on the injunction order.

(MOUSHUMI BHATTACHARYA, J.)