

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

ARBITRATION APPEAL NO.26 OF 2021

Dy. Chief Engineer (Construction)
Central, Central Railway, Bhusawal,
on behalf of Union of India

Appellant

Versus

M/s B. N. Agrawal, through its
Partner, Special Power of Attorney
Holder – Ashwin Suresh Agrawal,
age: 43 years, Occ: Business,
R/o Tulsi, 30, Hindu Housing Society,
Tq. Bhusawal, District Jalgaon.

Respondent

**AND
ARBITRATION APPEAL NO.25 OF 2021**

Dy. Chief Engineer (Construction)
Central, Central Railway, Bhusawal,
on behalf of Union of India

Appellant

Versus

M/s I. S.C. Projects – BNA Infra (JV),
Joint Venture, having office at S-2,
Metropol, Adjacent INOX Bund Garden,
Pune, through its Director and Special
Power of Attorney : Ashwin Suresh
Agrawal, age: 43, Occ: Business,
R/o Tulsi, 30, Hindu Housing Society,
Tq. Bhusawal, District Jalgaon.

Respondent

Mr.Sanjeev B. Deshpande, advocate for the appellant.
Mr.R.S.Deshmukh, Senior Counsel i/by Mr Nirmal Rajendra Dayama, advocate for the Respondents.

CORAM : AVINASH G. GHAROTE, J.

Judgment Reserved on : 27th July 2021.

Judgment pronounced on : 30th July,2021.

J U D G M E N T

1. Heard Mr.Sanjeev Deshpande, learned Counsel for the appellant and Mr.Rajendra Deshmukh, learned Senior Counsel with advocate Mr.Nirmal Dayma, for the Respondent. For the sake of convenience, the parties are referred, as they were before the lower Court. The arguments have been advanced on Arbitration Appeal No.26 of 2021. Learned Counsels for the parties, submit that the facts and the legal position in Arbitration Appeal No.25 of 2021 are identical except for certain dates and figures and, therefore, except for this variation, what has been argued in Arbitration Appeal No.26 of 2021, will equally apply to Arbitration Appeal No.25 of 2021.

2. The arbitration appeal no.26 of 2021 raises

challenge to the judgment dated 11.05.2021, passed by the learned Principal District Judge, Jalgaon, in CMA No.34 of 2021 under Section 9 of the Arbitration and Conciliation Act, 1996 ("A & C Act, 1996", for short, hereinafter), whereby, the effect, operation and execution of the impugned notice dated 02.01.2021, issued by the Non applicant/appellant, has been stayed till the constitution of arbitral tribunal and the applicant/Respondent herein has been directed to take appropriate steps, within 90 days of the date of the order for commencement of the arbitral proceedings, failing which, it is directed that the impugned order shall stand vacated immediately.

3. It is not in dispute, that pursuant to the NIT for work of construction of major bridges in Manmad-Jalgaon Section, the offer of the applicant / Respondent herein was accepted and an agreement came to be executed on 11.04.2018 consequent to which, work order has been issued. It is also not disputed that the applicant has deposited an amount of Rs.2,95,39,390/- by way of security deposit with

the non applicant. By the notice dated 02.01.2021, it was alleged, that various scheduled and non scheduled undue payments were given to the applicant for seven items as listed therein totaling Rs.66,49,110,42/-, which were to be recovered and, therefore, the said amount was asked to be deposited with the non applicant within 7 days therefrom.

4. Being aggrieved by the same, the applicant had approached this Court with Writ Petition No.2294 of 2021, however, in view of the arbitration clause 64, as contained in the agreement between the parties, this Court, indicated that the parties make take up the process of arbitration and disposed of the writ petition on 10.03.2021 with the above observation. It is in pursuant thereto, that an application under Section 9 came to be filed before the learned Principal District Judge, Jalgaon, which came to be registered as CMA No.24 of 2021, with the following prayer:

17.(a) Interim measure by way of stay to the effect, operation, execution and implementation of the recovery notice dated

02.01.2021 may kindly be stayed, till constitution of arbitral tribunal and commencement of arbitral proceedings.

5. The said application was opposed by the Non applicant and though it was admitted that an amount of Rs.2,95,39,930/-, was deposited by way of security deposit with the Railways/non applicant, however, by placing reliance upon clause 51.2 of the General Conditions of Contract (GOC hereinafter), which provided for post payment audit, it was contended that the non applicant had a right to recover the amount wrongfully paid to the applicant, which was to the tune of Rs.66,49,110.82 as detailed in para 3 of the reply.

6. The learned Principal District Judge, Jalgaon, by the impugned judgment dated 11.05.2021, allowed the application under Section 9 in the following terms:

“1 Application is allowed.

2 Applicant shall take effective steps as per Section 9(2) of the Arbitration and Conciliation Act for commencement of arbitral proceedings and it

shall be commenced within a period of 90 days from the date of order.

3 In the meanwhile, till the constitution of Arbitral Tribunal, the effect, operation and execution of the impugned notice dated 02.01.2021 is hereby stayed.

4 After the constitution of Arbitral Tribunal, the applicant shall be at liberty to apply for interim measures as per Section 17 of the Arbitration and Conciliation Act before the Arbitral Tribunal.

5 If the applicant fails to take steps within 90 days for the commencement of arbitral proceedings, the order shall stand vacated automatically.

6 Civil Misc. Application No.34 of 2021 stands disposed of accordingly.

7. Mr.Sanjeev Deshpande, learned Counsel for the Railways/Non applicant, vehemently contends as under:

(a) That an application for stay to the notice of demand dated 02.01.2021 was not within the four corners of Section 9 of the A & C Act, 1996. The use of the word “stay” according

to him was incorrect or a misnomer as the provisions of Section 9 did not contemplate granting of any stay. Relying on *Mulraj Vs. Murti Raghunathji Maharaj, AIR 1967 SC 1386*, learned Counsel submits that there is a difference between “stay” and “injunction”, inasmuch as order of stay is addressed to the Court while that of injunction is passed against a party and, therefore, it was not permissible for the learned Principal District Judge, Jalgaon, to have granted a stay to the notice dated 02.01.2021.

(b) That, the impugned judgment, was passed mechanically without considering the scope and ambit of Section 9 of the A & C Act, 1996.

(c) That, by granting the relief under Section 9, final relief has been granted as is disclosed from the observations in paras 19, 21 and 23 and nothing remains to be decided in arbitration due to which the learned Principal District Judge, Jalgaon, has travelled beyond the scope of Section 9 of the A & C Act, 1996.

(d) Section 9 of the A & C Act, 1996 is a drastic measure and the parameters are very harsh and have to be strictly complied with, considering that pre-proceeding powers have been granted to the Court.

(e) In case the applicant had any claim against the Railways, on account of compensation, the same was not quantified, as disclosed under the application under Section 9, which was necessary to be done, for the applicant, to claim relief under Section 9 (1) (ii)(b) of the A & C Act, 1996, in absence of which, the application was not maintainable as the relief seeking grant of stay could not have been so claimed under Section 9(1) (ii) (e) of the A & C Act, 1996.

(f) The language of Section 9 of the A & C Act, 1996, is phrased to give certain liberties and restrictions which have not been considered.

(g) Clause 51.2 of the agreement, permits post payment

audit and uses the expression and/or, *vis-a-vis* post audit payment and technical examination of the works, the import of which, has been lost sight of by the learned Principal District Judge, Jalgaon, in holding that the right of post payment audit was only on submission of the final bill and not in respect of the interim bills (para 20/163).

(h) The learned Principal District Judge, Jalgaon, erred in holding that the principles of natural justice were not followed as in a contractual case, the parties are governed by the contract. (para 18 page 163).

(i) Notice invoking the arbitration clause was a facade and the requirement of Section 9(2) of the A & C Act, 1996 was not complied with, inasmuch as, the arbitration proceedings were not commenced within 90 days from the date of the order passed under Section 9.

(j) Relying upon *Central Organization For Railway Electrification Vs. M/s EIC-SPIC-SMO-MCML (JV)*, Civil

Appeal No.9486-9487 of 2019, decided on 17.12.2019, it is contended that the arbitration clause, as it stands, has to be worked out.

(k) It is, therefore, submitted that the impugned judgment is required to be quashed and set aside and the application under Section 9, as filed by the applicant, be rejected.

8 Mr.Deshmukh, learned Senior Counsel for the applicant, submits as under:

(a) That in so far as the dictum in **Mulraj** (*supra*), relied upon by the non applicant, the same does not interdict the Court from passing an order based upon the contingency which is placed before it. The mere use of the word stay, in respect of the notice dated 02.01.2021, as used in the application under Section 9 or in the impugned judgment by the learned Principal District Judge, Jalgaon, by itself, cannot be a ground to deny relief to the applicant, which otherwise

has been found to be necessary to be granted, given the facts of the case.

(b) In compliance with the requirement of Section 9(2), a notice, invoking the arbitration clause, already stood issued to the non applicant on 26th July, 2021, the receipt of which is not denied by the learned Counsel for the non applicant. The notice was issued within a period of 90 days from the impugned judgment, which was dated 11.05.2021 and as the period of 90 days as yet was to expire on 10.08.2021, was well within the time limit prescribed by Section 9(2) of the A & C Act, 1996.

(c) The learned Principal District Judge, Jalgaon, has considered and dealt with, the dictum in **Mulraj** (*supra*) (para 26 page 165).

(d) Section 9(1)(ii)(a) (b) were not attracted and the case squarely fell within four corners of Section 9(1)(ii)(e) of the A & C Act, 1996.

(e) Though the amount claimed in the notice dated 02.01.2021 was being disputed, however, even otherwise, the Railways/non applicant had with them the security deposit to the tune of Rs.2,95,39,930/- in addition to which, performance bank guarantee to the tune of Rs.1,03,08,300/- was also with the Railways, and since the work was already going on in case, while settling the final bill, in spite of any objections raised by the applicant, the amount was found due and payable, the same could be deducted from the security deposit, which was multiple times, the amount claimed in the notice dated 02.01.2021, which was the position considered by the learned PDJ and was in consonance with clause 52 of the agreement.

(f) The impugned judgment, therefore, was correct and the appeal was required to be dismissed.

9. The execution of the agreement dated 11.04.2018; the issuance of the work order; deposit of an amount of

Rs.2,95,39,390/- by way of security deposit; performance bank guarantee of Rs. Rs.1,03,08,300/- are not disputed.

10. In so far as the contention by Mr. Sanjeev Deshpande, Learned Counsel for the non-applicant/Railways that the application u/s 9 of the A & C Act, 1996 and the impugned judgment is not legally tenable as it claims and grants a 'stay' and not an 'injunction' based upon **Mulraj** (supra), is concerned, it is material to note that **Mulraj** (supra) was a case in which what fell for consideration was whether a suit for eviction after permission had been obtained under the U.P. (Temporary) Control of Rent and Eviction Act, 3 of 1947, was maintainable, on the ground that the permission to sue had been granted at a time when there was a stay order. While considering the contention that the suit would not be maintainable in view of the stay as held by all the Courts below, the Hon'ble Apex Court held as under :

“8. We are of opinion that the view taken in *Bessesswari Chowdhurany case* [(1896-97) 1 CWN 226] is the correct one. An order of stay in an execution matter is in our opinion in the nature of a

prohibitory order and is addressed to the court that is carrying out execution. It is not of the same nature as an order allowing an appeal and quashing execution proceedings. That kind of order takes effect immediately it is passed, for such an order takes away the very jurisdiction of the court executing the decree as there is nothing left to execute thereafter. But a mere order of stay of execution does not take away the jurisdiction of the court. All that it does is to prohibit the court from proceeding with the execution further, and the court unless it knows of the order cannot be expected to carry it out. Therefore, till the order comes to the knowledge of the court its jurisdiction to carry on execution is not affected by a stay order which must in the very nature of things be treated to be a prohibitory order directing the executing court which continues to have jurisdiction to stay its hand till further orders. It is clear that as soon as a stay order is withdrawn, the executing court is entitled to carry on execution and there is no question of fresh conferment of jurisdiction by the fact that the stay order has been withdrawn. The jurisdiction of the court is there all along. The only effect of the stay order is to prohibit the executing court from proceeding further and that can only take effect when the executing court has knowledge of the order. The executing court may have knowledge of the order on the order being communicated to it by the court passing the stay order or the executing court may be informed of the order by one party or the other with an affidavit in support of the information or in any other way. As soon therefore as the executing court has come to know of the order either by communication from the court passing the stay order or by an affidavit from one party or the other or in any other way the executing court cannot proceed further and if it does so it acts illegally. There can be no doubt that no

action for contempt can be taken against an executing court, if it carries on execution in ignorance of the order of stay and this shows the necessity of the knowledge of the executing court before its jurisdiction can be affected by the order. In effect therefore a stay order is more or less in the same position as an order of injunction with one difference. An order of injunction is generally issued to a party and it is forbidden from doing certain acts. It is well settled that in such a case the party must have knowledge of the injunction order before it could be penalised for disobeying it. Further it is equally well settled that the injunction order not being addressed to the court, if the court proceeds in contravention of the injunction order, the proceedings are not a nullity. In the case of a stay order, as it is addressed to the court and prohibits it from proceeding further, as soon as the court has knowledge of the order it is bound to obey it and if it does not, it acts illegally, and all proceedings taken after the knowledge of the order would be a nullity. That in our opinion is the only difference between an order of injunction to a party and an order of stay to a court. In both cases knowledge of the party concerned or of the court is necessary before the prohibition takes effect. Take the case where a stay order has been passed but it is never brought to the notice of the court, and the court carries on proceedings ignorance thereof. It can hardly be said that the court has lost jurisdiction because of some order of which has no knowledge. This to our mind clearly follows from the words of Order 41 Rule 5 of the Code of Civil Procedure which clearly lays down that mere filling of an appeal does not operate as stay of proceedings in execution, but the appellate court has the power to stay the execution. Obviously when the appellate court orders the stay of execution the order can have affect only when it is made known to

the executing court. We cannot agree that an order staying execution is similar to an order allowing an appeal and quashing execution proceedings. In the case where the execution proceeding is quashed, the order takes effect immediately and there is nothing left to execute. But where a stay order is passed, execution still stands and can go on unless the court executing the decree has knowledge of the stay order. It is only when the executing court has knowledge of the stay order that the court must stay its hands and anything it does thereafter would be a nullity so long as the stay order is in force.”

Thus, what has been held in **Mulraj** (*supra*) is that in effect a stay order is more or less in the same position as an order of injunction with one difference that an order of injunction is generally issued to a party and it is forbidden from doing certain acts, in view of which though the application u/s 9 of the A & C Act, 1996, claims a ‘stay’ to the effect, operation, execution and implementation to the recovery notice dated 02/01/2021 which is granted by the learned Principal District Judge, Jalgaon, the same would not take it away from the ambit of Sec.9 of the A & C Act, 1996. Merely because a wrong nomenclature has been used in the matter of seeking relief as an interim measure u/s 9 of the A & C Act, 1996, or that the same has been used while granting the relief, that would not by itself deter from the efficacy of the interim measure granted or the power of the Court to grant the same. It is

a well settled position of law that what has to be seen is the substance and not the form and merely because an incorrect word or expression may have been used, that would not deprive the Court of its jurisdiction to entertain an application u/s 9 of the A & C Act, 1996. Same can also be said about the grant of the interim measure. When the only difference between a stay and an injunction as enunciated in *Mulraj (supra)* was that the stay was addressed to the order and Court, whereas an injunction was addressed to a party, in view of the fact that the Railways, already was a party to the proceedings u/s 9 of the A & C Act, 1996, and understood the nature of relief which was being sought and its effect, and had participated in the proceedings, it cannot be heard to say that the interim measure granted, was vitiated by use of a wrong word or expression. The contention of learned Counsel Mr. Sanjeev Deshpande, therefore will have to be rejected.

11. The contentions that the impugned judgment has been passed mechanically without considering the scope of sec.9 of the A & C Act, 1996 and that its language is phrased to give certain liberties and restrictions or that it is a drastic measure and the parameters are very harsh and have to be strictly complied with, considering that pre-proceeding powers are given to the Court, as

raised by learned Counsel Mr. Sanjeev Deshpande, are equally without any merit for the reason that **Firstly** : Sec. 9 (1)(i) & (ii) (a) to (d) of the A & C Act, 1996 encompasses several subjects which fall within the meaning of the expression 'interim measures' which the Court would be empowered to grant, based upon the facts and circumstances of each case. Over and above this Sec.9(1)(ii) (e) of the A & C Act, 1996 expands the scope of powers of the Court to grant 'interim measures', to even beyond what is contemplated and provided by Sec.9(1), (2) (a) to (d) of the A & C Act, 1996 and thus is wide enough to take into its ambit any 'interim measure of protection', as may appear to the Court to be 'just and convenient'. The language of Sec.9 of the A & C Act, 1996 is thus wide enough to include an 'interim measure' for restraining the Railways from taking any action based upon the notice dated 02/01/2021, as is apparent from a plain reading of the same. **Secondly** : The only restriction placed is by sec.9(2) of the A & C Act, 1996, which enjoins that the arbitral proceedings shall be commenced within a period of 90 days from the date of the order passed u/s 9 of the A & C Act, 1996 or within such further time as the Court may determine. In the present matter the judgment u/s 9 of the A & C Act, 1996 is dated 11.05.2021, and 90 days therefrom, expire on 08.08.2021 and the notice invoking the arbitration clause, seeking

appointment of the arbitrator is issued on 26.07.2021, by which the applicant has nominated Mr.Shreyas Patel, advocate, to be its arbitrator, which admittedly has been received by the non applicant-Railways. Hence, considering the mandate of Section 21 of the of the A & C Act, 1996, that the arbitral proceedings in respect of a particular dispute commence on the date on which a request for such dispute to be referred to the arbitration is received by the respondent, and in the instant matter, as Mr.Deshpande, learned Counsel for the applicant, does not dispute the receipt of the communication dated 26.07.2021 and since the period of 90 days, from the judgment, passed in CMA No.34 of 2021 is yet to expire, the requirement of section 9 (2) of the of the A & C Act, 1996, stands complied with. It is now for the Railways to nominate their arbitrator so that the panel can be formed and arbitration proceedings can be commenced and **Thirdly** : that an application for interim measures shall not be entertained by the Court under sec.9, once the arbitral tribunal is constituted, unless the Court finds that circumstances exist which may not render the remedy provided u/s 17 of the A & C Act, 1996 efficacious, which, admittedly, is not the position in the present case.

12. The next contention of learned Counsel

Mr.Deshpande, that by granting interim measure under Section 9, of the A & C Act, 1996, the learned Principal District Judge, Jalgaon, has granted the final relief, based upon the observations in para 19, 21 and 23 of the impugned judgment, and, therefore, the learned Principal District Judge, Jalgaon, has traveled beyond the scope of Section 9 of the A & C Act, 1996, is equally misconceived for the reason, that in law, any finding, observation, reasoning given in a judgment/order, by the Court, in exercise of the powers under Section 9(1) (i),(ii) (a) to (e) of the A & C Act, 1996, is only of a *prima facie* nature, and does not bind the arbitral tribunal, while deciding the dispute before it. Even para 34 of the impugned judgment indicates that the application under Section 9 has been allowed as the Court found that the applicant had made out a *prima facie* case.

13. In so far as the contention by Mr.Deshpande, learned Counsel for the non applicant that by not quantifying any claim on account of compensation, so as to invoke Section 9 (1)(ii) (b) of the A & C Act, 1996, it was not permissible for the applicant to invoke Section 9 (1)(ii)(e) of the A & C Act, 1996, the same does not hold any water, for the reason, that it would be equally permissible for a party, to invoke any of the provisions of Section 9(1) & (2)(i) & (ii) (a)

to (e) of the A & C Act, 1996, independently of each other as grant of an interim measure under any of the clauses of Section 9 (1) and (2) are not inter-dependent on or interlinked with each other, and can be invoked individually.

14. In so far as the plea, by learned Counsel Mr.Deshpande, that the learned Principal District Judge, Jalgaon, erred in holding that the principles of natural justice were not followed, in view of the legal position that in contractual matters the parties were governed by the terms of the contract and the principles of natural justice had no role to play, it is material to note that in para 18 of the impugned judgment, this plea, as raised by the applicant, has merely been noted by the learned Principal District Judge, Jalgaon, and the impugned judgment is not based upon this plea at all and no finding in this regard, has been rendered.

15. Reliance upon **Central Organization for Railway Electrification** (*supra*), by learned Counsel Mr. Deshpande, is also misplaced, for the reason, that the said judgment, is on the point of Section 11 (6) and not on Section 9 of the A & C Act, 1996, and, therefore, is clearly not applicable in the present

matter.

16. The contention by Mr.Deshpande that clause 51.2 of the GOC permits post payment audit and the same is not restricted, to be applicable upon submission of final bill, and the user of the expression “and or” in the second line of the clause indicates that it is disjunctive, and the post payment audit would be equally applicable to interim bills and vouchers is correct as the same is borne out from a plain reading of the clause, in view of which, the finding, in para 20 of the impugned judgment, that post payment audit has to be made on submission of final bill, is clearly not justified.

17. The issue, however, does not rest here, as the Court has to consider the matter as a whole. In that regard, clause 52 of the GOC being material, is reproduced as under:

“52. Withholding And Lien In Respect of Sums Claimed: Whenever any claim or claims for payment of a sum of money arises out of or under the contract against the contractor, the Railway shall be entitled to withhold and also have a lien to retain such sum or sums in whole or in part from the security, if any, deposited by

the contractor and for the purpose aforesaid, the Railway shall be entitled to withhold the said cash Security Deposit or the Security if any, furnished as the case may be and also have a lien over the same pending finalization or adjudication of any such claim. In the event of the security being insufficient to cover the claimed amount or amounts or if no security has been taken from the contractor, the Railway shall be entitled to withhold and have a lien to the extent of such claimed amount or amounts referred to supra from any sum or sums found payable or which at any time thereafter may become payable to the contractor under the contract or any other contract with this or any other Railway or any Department of the Central Government pending finalization or adjudication of any such claim.

It is an agreed term of the contract that the sum of money or moneys so withheld or retained under the lien referred to above, by the Railway will be kept withheld or retained as such by the Railways till the claim arising out of or under the contract is determined by the arbitrator (if the contract governed by the Arbitration Clause) or by the competent court as the case may be and that the contractor will have no claim for interest or damages

whatsoever on any account in respect of such withholding or retention under the lien referred to supra and duly notified as such to the contractor. For the purpose of this clause, where the contractor is a partnership firm or a limited company, the Railway shall be entitled to withhold and also have a lien to retain towards such claimed amount or amounts in whole or in part from any sum found payable to any partner / limited company, as the case may be whether in his individual capacity or otherwise.”

A bare perusal of the language of clause 52 of the GOC, indicates, that the Railways is entitled to withhold and have a lien on all such sums with it including the security deposit, as well as any sum/s found payable or may become payable to the contractor under the same contract or any other contract of the Railways or any department of the Central Government, pending finalization or adjudication of any claim. This would clearly indicate that even the amount claimed in the impugned noticed dated 02.01.2021, stood secured to the Railways, by virtue of the provision as contained in clause 52 of the GOC. The interim measure sought against the notice dated 02.01.2021, has to be looked into in the light of this security with the Railways, who has

not disputed, that the applicant, has already deposited an amount of Rs.2,95,39,.930/- with the Railways as security in addition to which, a bank guarantee to the tune of Rs.1,03,08,300/-. It is material to note that in para 6 of the application under Section 9 of the A & C Act, 1996, the applicant, has specifically made a statement as under:

“Furthermore, without admitted that the applicant is liable to pay an amount of Rs.66,49,110.82 it is most humbly stated that a security deposit of Rs.2,95,39,930/- is with the Railways and thus the said alleged recovery amount could very well be adjusted against the security deposit”.

18. It is, thus, apparent that when the amount claimed under the notice dated 02.01.2021, was fully secured and in light of the provision as contained in clause 52 of the GOC, all the amounts, including sums unpaid and payable, carried a lien in respect of the said amount, and the contract was still alive and continuing, due to its extension, till 31.12.2021, the acceptance of the contention that any recovery at the interim stage, by permitting the Railways to

enforce the demand as made in the notice dated 02.01.2021, would cause substantial loss to the applicant and would also be a hamper in the completion of the work, more so, in view of the fact that amount much more, than what was claimed, already stood deposited with the Railways on several counts, cannot be faulted with. It is material to state, that the further progress of the work, in a contractual matter, depends upon the timely release of the running bills, which are used by the contractor for meeting the running expenses on all counts, and if the amount sought to be claimed, is fully secured, over and above multiple times, the enforcement of any demand on any count, which is disputed, at an interim stage, would clearly affect adversely, the progress of the work. In that view of the matter, I do not find any infirmity, in the impugned judgment, which is a well reasoned one and is based upon, the admitted position of the amount claimed by the Railways being secured multiple times.

19. Even otherwise, the impugned order has a limited life, inasmuch as, it has been granted only till the constitution of the Arbitral Tribunal whereupon the applicant

has to apply before the Tribunal under Section 17 of the A & C Act, 1996, which application has to be decided on its own merits.

20. Arbitration Appeal No.26 of 2021, therefore, is without merit and is accordingly dismissed.

21. In Arbitration Appeal No.25 of 2021, the agreement is dated 29.03.2019 in respect of the work of construction of minor bridges and earthwork in embankment and cutting between Chalisgaon-Jalgaon Section in respect of which, the applicant has already deposited an amount of Rs.6,67,32,500/- by way of security deposit and has given bank guarantee of Rs.3,34,00,000/-, Rs.1,66,85,000/- and Rs.1,66,83,125/- as against which the notice of demand dated 02.01.2021 claims an amount of Rs.4,58,37,317.73. The period of the contract has been extended till 31.12.2021. The impugned judgment is dated 11.05.2021 and the notice, invoking the arbitration clause, was sent on 19.07.2021, before expiry of the period of 90 days, which was to expire on 08.08.2021. All other reasoning, pleas as well as the clauses

are identical, in view of which, what has been said in respect of Arbitration Appeal No.26 of 2021, will also apply to Arbitration Appeal No.25 of 2021. Therefore, Arbitration Appeal No.25 of 2021 also stands dismissed.

(AVINASH G. GHAROTE)
JUDGE

adb