

O.A.Nos.321 to 326 of 2021
and Arb Appln Nos.55 to 57 of 2021
N. SATHISH KUMAR,J.

The above Original Applications have been filed seeking various interim reliefs.

2. On 19.05.2021, this Court has passed an order restraining the third respondent from making payments to the first respondent to the extent of Rs.35 crores. Similarly, vide order dated 09.06.2021, after recording the submissions of both sides, this Court has passed the following order:

.....“The first respondent before sending any communication to the second respondent/bank, for invocation of Bank Guarantee, which was furnished by the applicant, will have to seek leave of this Court.....”

3. Yes Bank has filed an Arb. Appln Nos.55 to 57 of 2021 to permit the intervention of the applicant in the above Original Applications to protect the right of the applicant are not in anyway derogated or diluted.

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4. The applicant herein have been financing the respondents herein for the project, whereas the applicant herein entered into the contract with the first

respondent for design, Engineering, Supply, Erection, Commissioning and test run of two ship unloaders and the contract was entered on 18.08.2018. On the same day, similar contract for modification of existing conveys system including wagon and truck loading system entered between the applicant and the first respondent. The first contract value is to the tune of Rs.86.5 Crores and the second contract is to the tune of Rs.59.25 Crores.

5. It is the contention of the applicant that they have been executing the work as per the terms and substantial work has been completed. The first respondent has admitted to pay their liabilities to the tune of Rs.35 Crores. Despite reminders, the amount has not been paid.

6. It is their contention that in view of the dispute that arose between the parties, they referred the matter to the Arbitrator. In the meanwhile, the first respondent has filed a counter stating that they have no money in their hands. Therefore, order of this Court dated 19.05.2021 was not enforced. Accordingly, the order of this Court is not workable though various prayers have been sought in these applications.

7. Mr. Vijay Narayan, learned Senior Counsel submitted that since he has already filed application under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of Arbitrator to enter upon reference in the application and first respondent also before the NCLT, applicant's rights have to be protected by this Court preventing the first respondent from enforcing the performance bank guarantee and the matter may be relegated to Arbitral tribunal. Hence, he submitted that they will workout rest of the prayers before the Arbitral Tribunal, if necessary.

8. The learned counsel for the first respondent submitted that the first respondent company's financial position is very weak and they are not in a position to meet out the requirements. However, he submitted that with regard to the right of the applicant seeking orders against the first respondent from invoking the bank guarantee, the matter may be relegated to the learned Arbitrator. The learned counsel for the applicant submitted that since no other relief affects the rights of the bank, they have no issues at this stage.

9. Learned Additional Solicitor General appearing for the third respondent/Port submitted that as the Port has no liability to pay any amount to the first respondent, interim order passed by this Court as against the third respondent has to be vacated.

10. It is to be noted that after hearing both sides, this Court is of the view that the garnishee orders can be passed only when there is account lying in the hands of the garnishee. However, it has now transpired from the counter filed by the third respondent that no such liability exists. In such view of the matter, order passed by this Court restraining the third respondent from making payments to the first respondent to the extent of Rs.35 crores is hereby vacated. As other reliefs are not pressed in these applications.

11. This Court is of the view that since the applicant is sufficiently protected by order of this Court dated 09.06.2021 restraining the respondent namely contesting respondent from enforcing bank guarantee, such order shall be continued till the arbitral proceedings is over. In such view of the matter, no further relief is required.

12. It is open to the parties to seek any interim relief before the learned Arbitral Tribunal that may be constituted by the Court under Section 11 of the Act. Since other side also has no objection for appointing Arbitrator, it is also made clear that no interim relief is required to be sought without having Yes Bank or Port Trust. It is to be noted that the arbitration and reference is only between the original applicant and the contesting respondent company and if any interim relief in the nature of affecting the rights of the port or the YES bank is sought to be obtained, the same should be done only after hearing the YES Bank and Port, after making them as parties before the Arbitral Tribunal.

13. Accordingly, Original applications are disposed of. Consequently, Arbitration Applications are disposed of.

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12.08.2021

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