ODC-12

AP/475/2021
IA NO: GA/1/2022
IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE
(Via Video Conference)

MARCO FRANCESCO SHOES (INDIA) PVT. LTD.
VS
P AND P BUSINESS PVT. LTD.

BEFORE:
The Hon'ble JUSTICE RAVI KRISHAN KAPUR
Date : 4th February, 2022.

Appearance:-

Mr. Dhrubo Ghosh, Sr. Adv.
Mr. Abhratosh Majumder, Sr. Adv.
Mr. Rohit Banerjee, Adv.
Mr. Suryaneel Das, Adv.
....for the petitioner

Mr. Srijib Chakraborty, Adv.
Mr. Sunny Nandy, Adv.
Mr. Satyaki Mukherjee, Adv.
...for the respondent

Mr. Rudraman Bhattacharjee, Adv.
Mr. Amritam Mondal, Adv.
...for the intervening party

Mr. Amitesh Banjerjee, Sr. Standing counsel
Mr. Supratim Dhar, Adv.
Mr. Paritosh Sinha, Adv.
Mr. Arindam Mondal, Adv.
..for the State

The Court: This is an application under Section 9 of the Arbitration and Conciliation Act, 1996.

The disputes and difference between the parties arise out of an agreement for extraction of sand in respect of a tract of land situated at Mouza-Gopalpur, J.L. No.08 bearing plot No.1094 under P.S-Mejia, District-Bankura (hereinafter referred to as the said sand block).

The petitioner claims money reliefs to the tune of a approximately Rs.2.5 crores against the respondent. In paragraph 3(ili) of the petition it has been alleged as follows:

> *"In May, 2018, the respondent approached the petitioner with keen interest on entering the Sand Mining business. Thus, on 23.05.2018 the parties entered into an arrangement under which, inter-alia, the respondent could engage into sand mining business at the said sand block under the auspices of the petitioner for valuable consideration. The Respondent was under the obligation to pay Rs.3,00,98,132/- as non-refundable inter-corporate deposit to the petitioner, which was paid by the respondent on 23.05.2018 in favour of the District Land and Land Reforms Officer, Bankura. The respondent was under further obligation to pay Rs.4,00,000/- per month to the Petitioner on account of defraying running cost and other expenses in connection with the business, subject to further terms".*

This matter was moved *ex parte* on 17 November, 2021. Upon hearing the petitioner and perusing the petition, this Court was of the view that *prima facie* there appeared to be a violation of the provisions of the Mines and Minerals (Development and Regulations Act, 1957). In particular, Rule 37 of the Mineral Concessions Rule, 1960 prohibits a lessee from transferring a lease without previous consent in writing of the State Government. Rule 37 which is of wide amplitude provides as follows:

> (1) The lessee shall not, without the previous consent in writing of the State Government [and in the case of mining lease in respect of any mineral specified in [Part A and Part B of] the First Schedule to the Act, without the previous approval of the Central Government]—
> ***(a) assign, sublet, mortgage, or in any other manner, transfer the mining lease, or any right, title or interest therein, or***
> ***(b) enter into or make any[bona fide] arrangement, contract or understanding whereby the lessee will or may be directly or***

indirectly financed to a substantial extent by, or under which the lessee's operations or undertakings will or may be substantially controlled by, any person or body of persons other than the lessee:

[Provided further that where the mortgagee is an institution or a Bank or a Corporation specified in Schedule V, it shall not be necessary for the lessee to obtain any such consent of the State Government.]

[(1A) The State Government shall not give its consent to transfer of mining lease unless the transferee has accepted all the conditions and liabilities which the transferor was having in respect of such mining lease.]

(2) Without prejudice to the provisions of sub-rule (1) the lessee may, transfer his lease or any right, title or interest therein to person [who has filed an affidavit stating that he has filed an up-to-date income-tax returns, paid the income-tax assessed on him and paid the income- tax on the basis of self-assessment as provided in the Income-tax Act, 1961 (43 of 1961), on payment of a fee of five hundred rupees] to the State Government:

Provided that the lessee shall make available to the transferee the original or certified copies of all plans of abandoned workings in the area and in a belt 65 metres wide surrounding it:

[Provided further that where the mortgagee is an institution or a Bank or a Corporation specified in Schedule V, it shall not be necessary for any such institution or Bank or Corporation [139] [to meet with the requirement relating to income-tax]:]

[Provided further that the lessee shall not charge or accept from the transferee any premium in addition to the sum spent by him, in obtaining the lease, and for conducting all or any of the operations referred to in rule 30 in or over the land leased to him:]

(3) The State Government may, by order in writing determine any lease at any time if the lessee has, in the opinion of the State Government, committed a breach of any of the provisions of sub-rule (1) [or sub-rule (1A)] or has transferred any lease or any right, title, or interest therein otherwise than in accordance with sub-rule (2):

Provided that no such order shall be made without giving the lessee a reasonable opportunity of stating his case.

Accordingly, this Court had directed a notice to be served on the State of West Bengal to bring this fact to the attention of the State. Thereafter, the State has also filed a supplementary affidavit which has been affirmed by one Ujjal Kumar Das, the District Land and Land Reforms Officer, Bankura.

Mr. Chakraborty appearing on behalf of the respondent opposes the prayer for withdrawal of the petition. He relies on a decision of *Arcelor Mittal Nippon Steel India Ltd. versus Essar Bulk Terminal Ltd. 2021 SCC OnLine SC 718.*

An application for intervention has also been filed complaining of illegalities which have been committed by the petitioner in respect of subject sand block. It is also alleged on behalf of the intervener that, notwithstanding a subsisting order passed by a competent Civil Court, the State has taken no action whatsoever against the petitioner.

At the outset, I am of the view that the supplementary affidavit and Report filed on behalf of the State is a complete eyewash and does not deal with or at least choses to turn a blind eye to the concerns which this Court had expressed insofar as the subject sand block is concerned. The affidavit proceeds on the basis of two letters dated 23 December, 2021 and 24 December, 2021 wherein long after the filing of this proceeding and grant of the lease dated 3 November, 2017 in favour of the petitioner, a State representative has visited the subject sand block and had concluded that the petitioner was in possession of the same. This, in my view, glosses over the facts revealed in the petition and the concern of this Court that there maybe some kind of arrangement, contract or understanding whereby the lessee had directly or indirectly brought in a third party in respect of the subject sand block contrary to Clause 15 of the lease agreement dated 3rd November, 2017 entered into by and between the petitioner and the State. This would also be in blatant violation of Rule 37 as set out hereinabove.

In view of the fair submissions made by Mr. Amitesh Banerjee, Senior Advocate, appearing on behalf of the State, I think it is fit and proper that the Secretary, Commerce and Industries Department through his nominated representative look into this entire matter and initiate an appropriate enquiry after giving all the parties including the intervenor a right of hearing. It is expected that the Secretary will designate anyone except the District Land and Land Reforms Officer, Bankura who has affirmed the affidavit dated 28 January, 2022 which has been filed in this proceeding.

Insofar as the prayer for withdrawal of this application is concerned, I do not find any substance in the contentions of the respondent. The petitioner is granted liberty to withdraw this application and approach the Arbitral Tribunal for appropriate reliefs in accordance with law.

With the aforesaid directions, AP 475 of 2021 alongwith GA 1 of 2022 stand dismissed as withdrawn.

(RAVI KRISHAN KAPUR, J.)

D.Ghosh