

01 18.04.23

Ct. No. 37

Akd

In the High Court at Calcutta
Civil Appellate Jurisdiction
Commercial Division

F.M.A.T. 175 of 2022
CAN 2 of 2022
CAN 3 of 2023

Transafe Services Limited
Vs.
Petrofarms Limited & Anr.

Mr. Sayak Mitra
Ms. Anshumala Bansal,
Mr. Anujit Mookherji.
 ... for the appellant.

Mr. Arindam Guha,
Mr. Shuvasish Sengupta,
Ms. Arpita Dey.
 ... for the respondent no. 1.

Mr. Arik Banerjee,
Mr. Sumit Biswas.
 ... for the respondent no. 2.

By virtue of settlement agreement dated 18th March, 2023 the parties have settled the dispute excepting respondent no. 2. The said respondent no. 2 entered into an agreement of *leave and licence* with the respondent no. 1 for storage of empty ship containers with further lien for minimum 300 containers to be exercised by the respondent no. 1 in case of failure of payment of licence fee by the said respondent no. 2.

Pursuant to the said agreement the appellant used to keep the containers through the said respondent no. 2. The dispute arose when large number of containers were stored by the respondent no. 2 exceeding the cap indicated in the agreement without obtaining the written consent and thereafter the default was committed in respect of several creditors and a proceeding has been initiated before the NCLT. Subsequently the management and control

of the appellant has been taken over in terms of the order of the NCLT; yet the respondent no. 2 failed and neglected to pay the licence fee, which constrained termination of the agreement and the lien clause was duly invoked.

However, the respondent no. 1 refused to return the containers to the said respondent no. 2 though the aforesaid containers belong to the appellant. The proceedings have been initiated and because of the initiation of the proceedings and the agreement having been made in this regard, the containers were not released though the ownership lies with the appellant.

However, the appellant and the respondent no. 1 have entered into an agreement and arrived at the settlement that the containers would be released subject to the fulfillment of conditions incorporated in paragraph 9 of the terms of settlement.

The learned Advocate appearing for the respondent no. 2 submits that they are not party to the agreement and, therefore, unaware of such arrangement but it does not appear from the stand of the respective parties that the ownership of the containers is disputed.

Admittedly the appellant appears to be the owner of the containers and, therefore, in view of the agreement so arrived we do not find any impediment in recording the terms of settlement and dispose of the proceeding on the basis thereof.

So far as the claims against the respondent no. 2 is concerned is the subject matter of arbitral proceeding, which will continue despite the disposal of the instant appeal in accordance with law.

The appeal is thus disposed of on the basis of the settlement agreement dated 18th March, 2023.

The Inspector-in-Charge of Budge Budge police

station, 24-parganas (South) is directed to render all assistant to the appellant and the respondent no. 1 in the event an approach is made, so that the terms and conditions entered into the said agreement are duly implemented.

The appeal and the applications being CAN 2 of 2022 and CAN 3 of 2023 are disposed of.

(Harish Tandon, J.)

(Prasenjit Biswas J.)