

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Subrata Talukdar

and

The Hon'ble Justice Supratim Bhattacharya

CPAN 1184 of 2022

Hindustan Steel Works Construction

-vs.-

Shri P.L. Haranadh, Chairman & Ors.

in

MAT 287 of 2021

With

CAN 2 of 2022

The Board of Trustees for the Port of Kolkata & Anr.

-vs.-

Hindustan Steelworks Construction Ltd. & Ors.

For the Appellant

: Mr. Jaydip Kar

Mr. Amit Kr. Nag

Ms. R. Ray

For the HSCL/Respondent No.1 : Mr. Saptangshu Basu

Ms. Susmita Adhikary

For the Respondent No.3/ : Mr. Bijoy Adhikary
 Fairfax Industries Ltd. Mr. Ushananda Jana
 Mr. Bhaskar Chakraborty

Heard on : 27.02.2023

Judgment on : 12.05.2023

Subrata Talukdar, J.:- This Court has been called upon to decide the above noted contempt application being CPAN 1184 of 2022 arising out of the Judgement and Order dated 11th of March, 2022 passed in the appeal being MAT 287 of 2021 with IA No. CAN 1 of 2021, in the matter of Board of Trustees for the Port of Kolkata and Another vs. Hindustan Steel Works Construction Limited and Others.

The alleged contemnors, being the officers of The Board of Trustees for the Port of Kolkata as well as other officers involved with the management of the Haldia Dock Complex (*HDC*) which operates under the said Board of Trustees for the Port of Kolkata (for short, referred to as *KoPT*), were bound by the said Judgement and Order dated 11th of March, 2022, *inter alia*, to act as follows:-

“It is therefore a fact that pending resolution of the dispute between the parties, the interim arrangement for installation, operation and maintenance of the weighbridges in issue were permitted to be continued by

the Hon'ble Single Bench and the Hon'ble Division Bench having regard to the public interest involved in handling large volumes of the port traffic vide Orders dated 15th of May 2020 and 2nd of June 2020 (supra) and, such directions were not interfered with by the Hon'ble Apex Court.

In the above view of the matter the interim arrangement as directed by the Hon'ble Division Bench vide Order dated 2nd June, 2020 in terms of Clause 7.10 Sub-Clause (b) of the Contract shall continue. It will be open to the Arbitral Tribunal to modify the interim order in the event any change in circumstances is brought to its notice by the parties.

M.A.T. 287 of 2021 with I.A. No. CAN 1 of 2021 stand accordingly disposed of."

Although a prayer for stay was subsequently made by Learned Counsel appearing for the *KoPT* to stay the part of the Judgement and Order pertaining to the interim arrangement (*supra*), such prayer for stay stood refused.

On behalf of the applicants in CPAN 1184 of 2022, it is submitted that upon the failure of *KoPT* to comply with the direction of the Hon'ble Division Bench (*supra*), by a Contempt Notice dated 20th October, 2022, it was alleged that steps will be taken before the Hon'ble Court in the event there is further non-compliance of the solemn Order dated 11th of March, 2022 (*supra*).

The Notice of Contempt further, *inter alia*, stated as follows:-

“(a) The setting aside of the Termination Order and Show Cause Notice by the Single Bench in W.P. 4795 of 2020 has not been interfered with by the Division Bench.

Only partial setting aside of the Judgement pertaining to ‘Whether it is Assignment of Contract or Assignment of Services’ will be determined by the Arbitral Tribunal.

(b) The Division Bench has made the implementation of Clause 7.10 (b) mandatory in nature by stating the clause 7.10 (b) SHALL CONTINUE in public interest and can be modified by the Arbitral Tribunal.

(c) The Division Bench in MAT 443 of 2020 last para on Page 7 states “Clause 7.10 (b) was in fact invoked by KoPT while terminating the contract vide letter dated 01.01.2020. Purport and intent of the aforesaid clause in the contract is to maintain smooth functioning of port services particularly availability of weighbridges to port users for sometime notwithstanding unilateral termination by KoPT. This aspect of the matter particularly the necessity or continuation of smooth functioning of port services must be borne in mind pending adjudication of disputes between the parties Consequentially order dated 27th April, 2020 is also stayed.”

Soon after receipt of the Notice of Contempt dated 20th October, 2022, KoPT filed an application, being CAN 2 of 2022, on the 4th of November, 2022. By the said application the following prayer was made.

“a) Modification and/or clarification of the judgment and order dated 11 March 2022 passed by the Hon’ble Justice Subrata Talukdar and the Hon’ble Kesang Doma Bhutia in

M.A.T. 287 of 2021 with C.A.N. No. 1 of 2021 [The Board of Trustees for the Port of Kolkata & Anr. –Vs.- Hindustan Steelworks Construction Limited & Ors.] to the extent that the interim arrangement as directed by the Hon’ble Division Bench vide order dated 2 June 2020 in terms of Clause 7.10 sub-clause (b) of the contract stood lapsed in view of failure on the part of the respondent no. 1 herein to refer the alleged disputes to arbitration and the petitioners shall be at liberty to take appropriate steps in accordance with law;

b) Ad-interim order in terms of prayer above”

Having heard the parties and closely considering the materials placed, this Court finds that the interim arrangement directed to be maintained by the Order dated 11th March, 2022 was only conditional upon an Arbitral Tribunal modifying such interim arrangement in the event any change in circumstances is brought to the notice of the Learned Tribunal by the parties. This Court is therefore of the view that no other or further conditions and/or pre-conditions could be introduced by any of the parties into the interim arrangement.

The reason for maintaining the interim arrangement was the public interest involved in handling large volumes of traffic at *HDC*.

The further reason for allowing the interim arrangement could be found by the Hon’ble Division Bench in its Judgement and Order dated 11th of March, 2022 (*supra*) from the reasons assigned by an earlier Hon’ble

Single Bench and thereafter by an earlier Hon'ble Division Bench *vide* their Orders dated 15th of May, 2020 and 2nd of June, 2020 respectively.

It would be relevant for this discussion to first refer to the interim Order dated 15th of May, 2020 passed in the writ petition, being WP 4795 (W) of 2020 by an earlier Hon'ble Single Bench. The Hon'ble Single Bench had, *inter alia*, held that there is *prima facie* substance in the argument of the writ petitioner/Hindustan Steelworks Construction Limited (for short, *HSCL*) to the effect that the impugned order of termination of the Contract entered by and between *KoPT* and *HSCL* for installation, operation and maintenance of two weigh bridges at *HDC*, suffers from a jurisdictional error in as much as in terms of a Memo dated 22nd May, 2018, the dispute (*qua* termination of the Contract) requires to be referred to an internal administrative dispute resolving mechanism of the *KoPT*.

Accordingly, the Hon'ble Single Bench found a jurisdictional error in the action of *KoPT* to terminate the Contract without referring the matter to the internal administrative dispute resolving mechanism. The Hon'ble Single Bench hence restrained *KoPT* from giving effect and/or further effect to the impugned order of termination dated 1st January, 2020.

The Order of the Hon'ble Single Bench being carried in appeal before the Hon'ble Division Bench in MAT 443 of 2020, by the Order dated 2nd June, 2020 the Hon'ble Division Bench was pleased to, *inter alia*, hold as follows:-

“Whether the terms of the MoU would amount to assignment of contract in favour of Fairfax, and if so whether KoPT has consented thereto are disputed matters and may be adjudicated at the stage of final hearing subject, however, to the issue of maintainability of the lis. However, it is pertinent to note that the termination clause did not envisage an immediate severance of contractual obligations inter-parties as would appear from Clause (b) para 7.10 which reads as follows:-

“(b) During the termination period of three months as at (a) above, the contractor may be asked by KoPT to continue to discharge its obligations under the contract which the contractor would be capable of performing and as may be mutually agreed upon with the object, as far as possible of ensuring continued availability of the weighbridge facilities and services to the port users.”

Clause (b) was, in fact, invoked by KoPT while terminating the contract vide letter dated 01.01.2020. Purport and intent of the aforesaid clause in the contract is to maintain smooth functioning of port services 9 particularly availability of weigh bridges to port users for sometime notwithstanding unilateral termination by KoPT. This aspect of the matter particularly the necessity of continuation of smooth functioning of port services must be borne in mind pending adjudication of disputes between the parties. We are also not unmindful of the fact that the country presently is going through an extraordinary situation due to the pandemic. Under such circumstances, although we are not inclined to pass an order of injunction staying operation of the letter of termination dated 01.01.2020, we direct the stop gap arrangement

envisaged in clause (b) of para 7.10 of the contract may continue to ensure availability of weigh bridges and other services to port users. Consequentially order dated 27th April, 2020 is also stayed.

The aforesaid arrangement shall continue for a period of 10 weeks from date.

Learned Single Judge will be at liberty to extend, modify or alter the aforesaid arrangement on the application of the parties in the event the writ petition is not disposed of in course of the aforesaid arrangement after giving adequate opportunity of hearing to all the parties in accordance with law.

We make it clear that observations made by us are for the purpose of disposal of the appeal and would not have any bearing at the time of final hearing of the writ petition and all issues including the issue of maintainability of the 10 writ petition may be decided independently upon exchange of affidavits as directed by the learned Single Judge.

The appeal and all the connected applications are accordingly disposed of.”

The Order dated 2nd June, 2020 of the Hon’ble Division Bench was adjudicated upon by the Hon’ble Apex Court on 29th June, 2020 holding as follows:-

“Heard learned counsel for the parties.

We are not inclined to interfere in this Special Leave Petition. The Special Leave Petition is dismissed accordingly.

However, the dismissal of this Special Leave Petition will not preclude the petitioner from taking recourse to arbitration mechanism as provided for in the contract, if so advised.

All contentions available to both the parties in that behalf are left open.

We may not be understood to have expressed any opinion either way on the merits of the subject matter of pending or proposed proceedings between the parties.

Pending applications, if any, stand disposed of.”

The writ petition, being WPA 4795 of 2020, was ultimately decided by the Hon'ble Single Bench *vide* its Judgement and Order dated 4th of February, 2021 in favour of *HSCL*. The termination of the Contract along with all ancillary and consequential orders stood set aside.

This Court by the order in the appeal being MAT 287 of 2021 against the Judgement and Order of the Hon'ble Single Bench dated 4th February, 2021, permitted the parties an adjudication on merits by an Arbitral Tribunal. While allowing so, this Court further directed the interim arrangement, as earlier directed by the Hon'ble Division Bench *vide* its Order dated 2nd June, 2020 (*supra*) in terms of Clause 7.10 Sub-Clause (b) of the Contract, to continue till an Arbitral Tribunal modifies such interim arrangement consequent to any change in circumstances reported by the parties.

This Court is therefore clear in its view that no other condition or conditions, pre-condition or pre-conditions, could be introduced by any of

the parties into the interim arrangement, including the proposition proposed by CAN 2 of 2022 by *KoPT* that the interim arrangement stood lapsed in view of the failure on the part of *HSCL* to refer the dispute to arbitration.

This Court finds the stand taken by *KoPT* in its modification application being CAN 2 of 2022 as intended to deliberately frustrate the interim arrangement.

By filing the modification application after receiving the Notice of Contempt, *KoPT* intends to turn the solemn Order dated 11th March, 2022 on its head making the interim arrangement conditional upon a reference to arbitration first.

This Court equally makes it clear that the interim arrangement was directed to be maintained in public interest bringing back the parties to a stage of *status quo ante*. Accordingly, this Court finds the action of *KoPT* to be in contempt of its Judgement and Order dated 11th March, 2022.

For the above reasons, the Rule is made absolute against the alleged contemnors.

The *KoPT* shall be liable to compensate *HSCL* at the rate at which *HSCL* was receiving payment in November, 2019, i.e. just prior to the issuance of the termination notice dated 1st January, 2020. *HSCL* shall be also entitled to be paid the lease rent and other administrative expenses as payable to it under the Contract as subsisting in November, 2019.

The compensation, as directed above, shall be payable calculable for each month, month by month, commencing from April, 2022, i.e. the month

immediately following the Order dated 11th March, 2022, until actually paid. The compensation, if not actually paid by the end of May, 2023, shall carry a simple interest of 10% per annum till actually paid and/or till an Arbitral Tribunal constituted by the parties passes any other or further Orders.

HSCL shall be entitled to approach the appropriate Learned Civil Court quantifying the amount receivable by it and place a prayer for grant of summary reliefs.

Parties shall be entitled to act on the basis of a server copy of this Judgement and Order placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

I agree.

(Supratim Bhattacharya, J.)

(Subrata Talukdar, J.)

Later:-

Prayer for stay is made by Learned Counsel appearing for the *KoPT*.

Prayer for stay is considered and refused.

I agree.

(Supratim Bhattacharya, J.)

(Subrata Talukdar, J.)