



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

ARBITRATION APPEAL NO. 37 OF 2023

(M/S. MADHUCON-NOORANI JV..VS.. WESTERN COALFIELDS LTD & OTH.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri F.T.Mirza, Adv. a/w. Shri A. Deshpande, Advocate for Appellant.
Shri Nachiket G. Mohrir, Advocate for Respondent Nos.1 and 2.
Shri A.K. Sharma, Advocate for Respondent No.3.

CORAM : ANIL S. KILOR, J.
DATED : NOVEMBER 06, 2023.

1. Heard.
2. In this appeal the appellant has raised a challenge to the judgment and order dated 28/08/2023 passed by District Judge-8 and Additional Sessions Judge, Nagpur dismissing the application under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act of 1996") for grant of interim measures.
3. The appellant is a Joint Venture (JV), who responded to the notice dated 01/06/2022 issued by respondent No.2 for transportation of coal from Stockyard Hip No.2 (North Side of Quarry) of Penganga OCM to Ghuggus New Railway Siding. The said transportation was to be done by tippers.
4. On finding the appellant as suitable the agreement was executed on 06/11/2022. The route

through which the coal was to be transported was pre-determined and the rates were decided.

5. The respondent on 04/03/2023 issued show cause notice to the appellant alleging that the appellant failed to achieve expected benchmark and has failed to complete the work.

6. The appellant challenged the said show cause notice by preferring Writ Petition No. 2065 of 2023.

7. Thereafter, the respondent cancelled the contract vide order dated 29/07/2023 and debarred the appellant from participating in any of the other tenders of the respondents for one year and started recovery of loss of damages.

8. The appellant, being aggrieved and dissatisfied with the said order, approached the District Judge by filing Arbitration Case No.139 of 2023 under Section 9 of the Act of 1996 for interim measures. The said application came to be rejected vide impugned judgment and order dated 28/08/2023, which is the subject matter of challenge in the present appeal.

9. Shri Mirza, learned counsel for the appellant submits that the route for transportation of coal was given to the appellant as per the agreement. On the said route

there is a bridge over Wardha river popularly known as “Moongoli River Bridge”. He submits that on 06/11/2022 an agreement was entered into and immediately on 06/12/2022 the said bridge started showing signs of damages and from 16/12/2022 because of major damages to the bridge, vehicular movements were stopped. It is submitted that the respondents constructed temporary earthen bridge and forced the petitioner to transport through the said route from 27/12/2022. However, it was of non-motorable condition correspondence was made with the respondents. It is submitted that despite the repeated communications made with the respondents in this regard, the respondents issued show cause notice and cancelled the contract. He, therefore, submits that though the case was made out under Section 9 of the Act of 1996, the same was rejected.

10. On the other hand, Shri Moharir, learned counsel for the respondent Nos. 1 and 2 submits that it is the appellant who abruptly stopped the work contrary to the conditions of the agreement. It is submitted that the appellant failed to achieve the expected target given in the agreement, whereas, on the same route other two contractors completed the target.

11. Shri Moharir, learned counsel for the respondent Nos. 1 and 2 has drawn attention to the various correspondence made by the respondents with the

appellant pointing out that necessary matching equipments were not deployed as per the agreement. He submits that it was also informed that there is a sufficient stock of coal available at the mine for transportation. Despite the same, without deploying the necessary matching equipments as agreed under the agreement and thereby the appellant failed to achieve the target. He, therefore, submits that the learned District Judge rightly rejected the application under Section 9 of the Act of 1996.

12. In light of the rival submissions, I have perused the record and the impugned order.

13. It is evident from the record that, the letters, time to time issued by the respondents to the appellant, pointing out that as per the work order the appellant has to transport minimum 11513 Te coal per day by deploying matching equipments as per Annexure-B of the NIT. It was also informed that sufficient matching equipments were not deployed and thereby failed to achieve the target.

14. Though, it is the case of the appellant that the transportation of coal from Wardha River has been stopped on 27/12/2023 and prior to that the said bridge started signs of damages and it was informed to the respondents, it can be seen from the agreement dated

06/11/2022, which provides a clause that in case of increase of any route the parties to the agreement were at liberty to charge separate rates for additional kilometers for transportation of the coal. In view of the said clause the appellant was supposed to transport the coal and achieve the target. However, the record shows that the appellant failed to deploy the requisite quantity of tippers and equipments as mentioned in the agreement for lifting and transportation of the coal and resultantly failed to achieve the target even before closure of the bridge.

15. The temporary bridge constructed by the respondents was used by the other contractors. However, the appellant has not brought anything on record to show that other transporters have also failed to transport the requisite quantity of coal due to alternative arrangement.

16. Thus, there is sufficient material to arrive at a conclusion that the appellant failed to achieve the requisite target. Thus, in view of the clause relating to termination of the contract, the contract may be terminated.

17. The learned District Judge, while rejecting the application under Section 9 of the Act of 1996 has categorically observed that the appellant failed to make out a *prima facie* case and balance of convenience is not in favour of the appellant. It is further held that as regards

the irreparable loss if temporary injunction is not granted, would not arise in the facts and circumstances of the case.

18. I do not find any error committed by the learned District Judge in rejecting the application filed under Section 9 of the Act of 1996. Hence, I pass the following order:

The Writ Petition is **dismissed**. No order as to costs.

JUDGE

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