

(2022) 02 DEL CK 0187

In the Delhi High Court

Case No : Arbitration Petition No. 1256 Of 2021, Original Miscellaneous Petition (I) (COMM.) No. 42 Of 2022

Arcelor Mittal Nippon Steel India Limited

APPELLANT

Vs

Mideast Integrated Steels Limited

RESPONDENT

Date of Decision : 23-02-2022

Acts Referred:

Arbitration And Conciliation Act, 1996 — Section 9, 11, 12, 17
Negotiable Instruments Act, 1881 — Section 138

Citation : (2022) 02 DEL CK 0187

Hon'ble Judges : Suresh Kumar Kait, J

Bench : Single Bench

Advocate : Arun Kathpalia, Anannya Ghosh, Ragini Gupta, Kawal Nain, Kavita Sharma, Rohit Dadwal

Final Decision : Disposed Of

Judgement

Suresh Kumar Kait, J

1. The above captioned first petition (ARB.P.1256/2021), has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 seeking appointment of an Arbitrator to adjudicate the disputes between the parties. The second captioned (O.M.P. (I) (COMM.) 42/2022) has been filed by the petitioner under Section 9 of the Arbitration and Conciliation Act, 1996 seeking directions to the respondent to deposit an amount of Rs.130,00,00,000/- being the unadjusted advances under the Agreement read with the Addendum. Further direction is sought to the respondent to disclose details of bank accounts, all the moveable and immoveable assets and receivables and restraining it from taking any coercive actions in any manner disposing off, selling, transferring, creating third party right, title interest and claim of any nature whatsoever in its immoveable and movable assets till adjudication of disputes between the parties.

2. Since the parties in the above captioned petitions are same and issues between the parties are similar in nature, therefore, with the consent of learned

counsel for the parties these petitions have been heard together and are being disposed of by this common judgment.

3. Petitioner is a company incorporated under the provisions of the Companies Act, 1956 and is an integrated flat carbon steel manufacturer. Previously prior to January 2020, petitioner was known as Essar Steel India Limited.

4. Learned counsel for the petitioner submits that in the year 2009, petitioner had an urgent need for Iron Ore Fines having certain specifications for operationalizing its beneficiation situated at Dabuna, Odisha. In view of representations made by respondent, petitioner and respondent entered into an Offtake Agreement on 02.09.2009 wherein respondent supplied 15 million tons of Iron Ore Fines to the petitioner for a sum of Rs.154 crores. Accordingly, petitioner paid advance payment and as security for advance payment, respondent provided some undated cheques aggregating to Rs.154 crores. Despite having taken advances, the respondent failed to supply the contracted quantities, notices were issued to it to comply with contractual obligations. Thereafter, respondent had delivered some quantities to the extent of Rs.16 crores. In these circumstances, the Addendum was executed between the parties for extending tenure of the agreement to 31.03.2017 and setting out further terms for damages and interest payable to the petitioner for the delay. Till the term of the Addendum expired, respondent had only supplied 0.7 million tons of Iron Ore Fines and the amount adjustable against the supplies was only 24 crores. Thereafter, petitioner issued a notice on 22.05.2018 to refund the unadjusted advances to the tune of Rs.130 crores, however, in response thereto, respondent refused to refund the same and also claimed that advance payment was to be adjusted against the supply of Iron Ore Fines. As the respondent refused to refund the amount, petitioner presented cheques of Rs.123 crores out of the security cheques which got dishonoured.

5. Learned counsel for the petitioner submitted that as the security cheques got dishonoured, petitioner filed petition under Section 138 of the Negotiable Instruments Act, 1881 and the same is pending adjudication.

6. Subsequently, on 13.11.2021, petitioner invoked arbitration by issuing notice to the respondent under Article 21 of the Agreement and Clause 6 of the Addendum and proposed the name of Hon'ble Mr. Justice (Retd.) Abhay Manohar Sapre, as the sole arbitrator. However, in response thereto dated 10.12.2021, respondent refused for appointment of arbitrator proposed by the petitioner and instead, proposed the name of Mr. Justice (Retd.) Arijit Pasayat as the sole arbitrator. Since petitioner and respondent have failed to jointly appoint Sole Arbitrator, hence, the petitioner is before this Court.

7. Learned counsel appearing on behalf of respondent has objected to the averments made in the present petitions, however, has submitted that the disputes are arbitrable and he has no objection if this Court appoints sole arbitrator.

8. In view of the above, the above captioned first petition is allowed. Accordingly, Mr. Justice (Retd.) K.G. Balakrishnan, former Chief Justice of India (Mobile:9717277700) is appointed sole Arbitrator to adjudicate the dispute between the parties.

9. The fee shall be decided by the learned Arbitrator after consultation with the parties.

10. The learned Arbitrator shall ensure compliance of Section 12 of Arbitration and Conciliation Act, 1996 before commencing the arbitration.

11. With regard to second petition filed under the provisions of Section 9 of the Arbitration and Conciliation Act, 1996, this Court finds that since the subject matter of dispute has been referred to the arbitral tribunal, parties are at liberty to claim any interim relief before the learned Arbitrator.

12. At this stage, learned counsel appearing on behalf of petitioner submits that the second captioned petition be treated as the one filed under Section 17 of the Act and it be also referred to the arbitral tribunal for consideration under the provisions thereof.

13. The aforesaid submission of learned counsel for petitioner is not disputed by the other side.

14. Accordingly, it is directed that the second captioned petition i.e. O.M.P.(I) (COMM.) 42/2022 be treated as the one filed under Section 17 of the Arbitration and Conciliation Act, 1996 on behalf of petitioner and it is also referred to the Arbitral Tribunal for consideration as per law.

15. Registry is accordingly directed to send O.M.P.(I) (COMM.) 42/2022 to the learned Arbitrator forthwith. Respondent shall comply with Para-7 of order dated 08.02.2022 in O.M.P.(I) (COMM.) 42/2022 within two weeks with an advance copy to the other side, before the arbitral tribunal, who shall consider the same in accordance with the law.

16. With aforesaid directions, the above captioned two petitions are accordingly disposed of.

17. A copy of this order be sent to the learned Arbitrator for information.