
(2013) 03 BOM CK 0131

In the Bombay High Court

Case No : Appeal No. 114 of 2013 in Arbitration Petition No. 355 of 2011 and
Appeal No. 30 of 2013 in Arbitration Petition No. 355 of 2011

Dirk India Private Limited

APPELLANT

Vs

Maharashtra State Electricity Generation Company Limited

 Maharashtra State Electricity Generation Company
Limited Vs Dirk India Private Limited

RESPONDENT

Date of Decision : 19-03-2013

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 2(h), 34, 36, 43(4), 9

Citation : (2013) 7 BomCR 493

Hon'ble Judges : D.Y. Chandrachud, J;A.A. Sayed, J

Bench : Division Bench

Advocate : Milind Sathe, with Mr. Shiraz Rustamjee, Mr. Mukund Tally, Ms. Shamina Tally, Mr. Mustafa Kachwala and Ms. Mallika Tally instructed by S. Mohomedbhai and Co. in Appeal No. 114 of 2013 and Notice of Motion No. 507 of 2013 and Mr. Aspi Chinoy, with Mr. Dinyar D. Madon and Mr. P.V. Bhalerao instructed by Mr. S.S. Kulkarni in Appeal No. 30 of 2013 and Notice of Motion No. 2457 of 2012, for the Appellant; Aspi Chinoy with Mr. Dinyar D. Madon and Mr. P.V. Bhalerao instructed by . Mr. S.S. Kulkarni in Appeal No. 114 of 2013 and Notice of Motion No. 507 of 2013 and Dr. Milind Sathe with Mr. Shiraz Rustamjee , Mr. Mukund Tally, Ms. Shamina Tally, Mustafa Kachwala and Ms. Mallika Tally instructed by . S. Mohomedbhai and Co. in Appeal No. 30 of 2013 and Notice of Motion No. 2457 of 2012, for the Respondent

Judgement

D.Y. Chandrachud, J.—These appeals arise from an order of a learned Single Judge dated 30 April 2012 on a petition u/s 9 of the Arbitration and Conciliation Act, 1996. An agreement was entered into on 4 October 2000 between Maharashtra State Electricity Board (MSEB) and Dirk India Private Limited (DIPL). The agreement envisaged that Pulverized Fly Ash (PFA) that is generated from MSEB's Thermal Power Station at Nasik would be transported to four hoppers which were to be constructed by DIPL at site. DIPL was to utilise PFA in its PFA handling plant for the manufacture of POZZOCRETE concrete. This was to

protect the environment against the degrading impact of PFA. An arbitration agreement was contained in the contract between the parties. Disputes and differences arose between the parties. These were referred to a three-member arbitral tribunal consisting of Mr. Justice B.N. Srikrishna, former Judge of the Supreme Court, Mr. Justice V.G. Palshikar and Mrs. Justice K.K. Baam, former Judges of this Court. The arbitral tribunal rendered its award on 31 March 2011 by which it dismissed the claim of DIPL as well as the counter claim of Maharashtra State Electricity Generation Company Limited (MSEGCL), the successor-in-interest of the erstwhile State Electricity Board.

2. In order to understand the finding of the arbitral tribunal, a brief reference to the salient obligations assumed by and between the parties under the contract would be in order:

(i) Under clause 2.1, DIPL was required to construct at its own expense a PFA handling plant, including inter alia the construction of Silo(s), the common fabrication of connecting spool between the hoppers at the site within a period of 12 months;

(ii) Under clause 3.1, DIPL was required to erect at its cost four hoppers for collection of PFA within the precincts of the Thermal Power Station;

(iii) MSEB was required to provide PFA from the Electrostatic Precipitators and deliver it to DIPL by depositing it in the hoppers to be constructed by DIPL under clause 3.1;

(iv) DIPL agreed to off-take a minimum quantity of 1,000 metric tons per day of PFA for a maximum period of 12 months from the commissioning after which it was required within a period of 48 months from the effective date to off-take a minimum quantity of 3,000 metric tons per day of PFA during the remaining term of the agreement; and

(v) DIPL was under clause 3.5 required to transfer the PFA from the hoppers to its PFA plant at its own cost and responsibility.

3. The arbitral tribunal by its Award came to the conclusion that though under the contract, DIPL was to erect at its cost silos or hoppers, it failed to discharge its contractual obligation of doing so and to ensure that the agreed quantity of PFA so stored could be transported to its PFA plant. The arbitral tribunal held that right from the inception, DIPL in breach of its obligation to erect four hoppers constructed only one hopper. The tribunal rejected the defence of DIPL that it did not erect the remaining hoppers because the MSEB failed to deliver PFA in the required quantity. The tribunal entered a finding of fact that though DIPL agreed to lift 3,000 metric tons of PFA per day after a stipulated period, yet even after three years it had not been able to lift more than 600 metric tons of PFA per day. The finding of fact which was recorded by the arbitral tribunal was as follows:-

27. The Company had voluntarily agreed to make effective system for such transportation of PFA. Inaction on the part of the Company to do anything this

regard shows that it wanted to act under the Contract as it suits its purpose and not fulfilment of the entire contract. From the Contract it will be seen that the Company was to erect at its cost enough Silos as would contain at least 3000 MTS of PFA per day so that the agreed quantity of PFA so stored could be transported to the Company site. It had agreed to fabricate common connecting spool for transportation of PFA. But it was never done by the Company. The inability of the Company to fulfil its part of the Contract was demonstrated by it from the beginning. The Company was to erect 4 hoppers; it however constructed only one hopper. The company claims that it did not erect the remaining 3 hoppers because Genco had failed to deliver PFA in required quantities. This claim on the face of it is untenable. The company always had the choice of units in the matter of collection of PFA. It had agreed to lift 3000 MTs PFA per day after completion of two years of the contract but even after 3 years therefrom the company never lifted anything more than 600 MTs PFA per day. This was therefore, a substantial failure on the part of the company in relation to another important feature of the contract namely lifting of 3000 MTs PFA per day for effective prevention of pollution. It did not achieve even 1/5th of the target it had solemnly contracted to.

The Tribunal came to the conclusion that the termination of the contract was valid and lawful. Finally, the Award summarised its findings on the breach of obligations by DIPL thus:-

To summarize we find the following substantial legal and valid reasons for termination of the contract by the Genco.

- i) Total failure to achieve prevention of environmental pollution due to inaction of the Claimant Company in not fulfilling substantial terms of the contract.
- ii) Failure of the company to lift 3000 MTS PFA per day though agreed specifically under the contract.
- iii) Failure on the part of the Claimant Company by not transporting even 1/5th of the agreed amount of PFA per day is certainly a failure to carry out substantial part of the responsibility under the contract.

4. DIPL has filed a petition u/s 34 in order to challenge the award. During the pendency of the arbitral proceedings, proceedings were initiated u/s 9 of the Arbitration and Conciliation Act, 1996. In those proceedings, an order was passed by a Division Bench on 12 February 2009 which was further clarified on 18 June 2010. After the arbitral tribunal delivered its Award, DIPL made an application before the Single Judge u/s 9. Before the Single Judge, a preliminary objection was raised to the maintainability of the petition u/s 9 on the ground that there being no award in favour of DIPL which DIPL could enforce, a petition u/s 9 was not maintainable. The learned Single Judge held that prima facie there appeared substance in the submission of MSEGCL that proceedings u/s 9 may not be maintainable in the absence of any award in favour of DIPL. Yet, keeping the issue of maintainability open, the learned Single Judge addressed the

question as to what interim order should be passed to govern the rights of the parties pending the hearing of the petition u/s 9 and the final hearing of the petition u/s 34. The interim arrangement which held the field during the pendency of the arbitral proceedings was modified so as to restrict the interim order to 30% of the PFA which would henceforth be generated in the thermal power plant of MSEGCL. The learned Single Judge adverted to the finding of the arbitral tribunal that DIPL had (i) constructed only one hopper as opposed to its contractual obligation to erect four hoppers; (ii) substantially failed to comply with its obligation to lift 3,000 metric tons of PFA per day for the effective prevention of pollution; and (iii) failed, as a matter of fact, to achieve even one-fifth of the target. The learned Single Judge adverted to the statement made on affidavit by MSEGCL to the effect that in 2009-10 it had lifted 32% of the PFA available from 126 hoppers whereas other contractors had lifted 15% from the remaining 26 hoppers. As a result, DIPL had utilized only 47% of the PFA generated resulting in 53% being consigned to the lagoon. The figures for 2010-11 were not materially relevant. The order of the learned Single Judge noted that whereas the daily generation of PFA is in the range of 3400 metric tons, DIPL had stated on affidavit that it was collecting fly ash of between 950 metric tons to 1300 metric tons per day. The Single Judge has as an interim arrangement permitted DIPL to lift around one-third of the PFA in terms of the earlier interim order, allowing it the choice of hoppers from which it would collect PFA. The Single Judge has directed that DIPL can choose one-third of the hoppers which are operating and lift the PFA from the said hoppers. In respect of the remaining hoppers, liberty has been furnished to MSEGCL to dispose of the PFA by auction in which DIPL has also been permitted to bid.

5. Two appeals have been filed from the order of the learned Single Judge. In the appeal filed by MSEGCL, the maintainability of the petition u/s 9 of the Arbitration and Conciliation Act, 1996 is questioned. Learned Senior Counsel appearing in support of the appeal by MSEGCL submitted that:

(i) The scheme of Section 9 is that a protective order can be passed before or during the arbitral proceedings and after the making of the arbitral Award, but before it is enforced in accordance with Section 36;

(ii) The power of the Court to order an interim measure after the making of the arbitral Award and before it is enforced in accordance with Section 36 is to protect the party which has succeeded in the arbitral proceedings until the award is enforced;

(iii) The Court exercising jurisdiction u/s 34 does not exercise the powers of a Court of appeal and can only set aside an award on a petition u/s 34 if the challenge were to succeed. Where a claim in arbitration has been dismissed, the Court u/s 34 cannot pass a decree in the manner of a Court of appeal. An interim measure u/s 9 is in aid of the final order that can be passed and even if the petition u/s 34 were to succeed, that would result in setting aside of the award.

(iv) A proceeding u/s 9 after the making of an arbitral award is at the instance of a party who wants the award to be enforced. If the arbitral tribunal has held against a party and has rejected its claim, there would be no occasion to maintain a petition u/s 9 since there is no question of the enforcement of the arbitral award at the behest of that party; and

(v) What DIPL in substance seeks is an interim specific performance of its claim and the agreement despite the fact that the arbitral tribunal has specifically rejected the claim holding that specific performance was not to be granted.

6. On the other hand, it has been urged on behalf of DIPL that:

(i) The expression "enforced" in Section 9 means "legally executed". The dismissal of the claim of DIPL is questioned in the Arbitration Petition under 34 and would operate as res judicata unless the award is set aside. The finality of the award is an issue of executability and there is nothing in Section 9 which would restrict a party which has lost in the arbitral proceedings from seeking continuation of the interim order;

(ii) In several situations envisaged in the grounds of challenge u/s 34, it could be conceived that the arbitral proceedings can re-commence and the mandate of the arbitral tribunal would not end such as where (a) the award has been passed in violation of the principles of natural justice; or (b) the arbitral tribunal has not been properly constituted. Section 43(4) provides for the exclusion of the period between the date of commencement of the arbitration and the date of the order of the Court setting aside an arbitral award for the commencement of proceedings with respect to the dispute so submitted. Hence, it was urged that though DIPL has not succeeded before the arbitral tribunal, that would not preclude it from taking recourse to the provisions of Section 9.

7. Both DIPL and MSEGCL have challenged the order of the learned Single Judge. DIPL in the course of its submission has asserted that: (i) While the learned Single Judge justifiably restricted the claim of DIPL to lift one-third of PFA in terms of paragraph 12 of the operative directions, the Court was in error in holding that DIPL can choose one-third of the number of hoppers which are operating so as to lift PFA only from those hoppers; (ii) The daily generation of PFA in the range of 3400 metric tons as held in paragraph 11(e) of the order would have to be corrected to account for the factual position that two units are not presently functional so that the available quantity would be in the range of 2,500 metric tons; (iii) In the affidavit dated 6 November 2011 which has been filed during the pendency of the appeal, DIPL has clarified that between May and October 2012 it has lifted an average of 947.2 metric tons of PFA per day. On the merits of the arbitral award, it was urged that the arbitral tribunal has failed to notice that it was the obligation of MSEGCL to deliver PFA to the four hoppers which were to be constructed by DIPL which in turn was to bear the obligation to transport the PFA to its PFA plant. DIPL constructed only one hopper because MSEGCL did not deliver PFA into the hopper in breach of its contractual

obligations.

8. On the other hand, it has been urged on behalf of the MSEGCL that the finding of the arbitral tribunal would indicate that: (i) In breach of its obligation to construct four hoppers for the storage of PFA, DIPL constructed only one hopper; (ii) As a matter of fact, DIPL constructed only one experimental hopper with a storage capacity of 60 metric tons which was completely inadequate to lift the off-take of 3,000 metric tons per day; (iii) There is a detailed inquiry by the arbitral tribunal followed by the finding of fact that DIPL was unable to lift more than 600 metric tons of PFA per day; (iv) Even the figures which have been taken note of by the learned Single Judge would demonstrate that though DIPL had 85% of the total number of hoppers (126 out of 152) it was able to lift only 32% of the fly ash resulting in a serious environmental situation. On these grounds it was submitted that there is no reason or justification for the learned Single Judge to pass an interim protective order, despite the finding of the arbitral tribunal in the course of the arbitral award.

9. The appeals have been taken up for final hearing by consent. Full arguments have been addressed by Counsel for both the sides on the issue of the maintainability of the petition u/s 9 and on merits. These rival submissions now fall for determination.

10. The primary question which arises before the Court is whether the application that was filed by DIPL u/s 9 was maintainable. Section 9 provides as follows:-

9. Interim measures, etc. by Court.-- A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with section 36, apply to a Court--

(i) for the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings; or

(ii) for an interim measure of protection in respect of any of the following matters, namely:-

(a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;

(b) securing the amount in dispute in the arbitration;

(c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;

(d) interim injunction or the appointment of a receiver;

(e) such other interim measure of protection as may appear to the Court to be just and convenient, and the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it.

11. Now, at the outset, it must be noted that u/s 9, it is a party which can apply before the Court. The expression "party" is defined to mean in Section 2(h) a party to an arbitration agreement. Section 9 contemplates that a party may apply to the Court: (i) before arbitral proceedings; or (ii) during arbitral proceedings; or (iii) at any time after the making of the arbitral award but before it is enforced in accordance with Section 36. Now insofar as the stage prior to the commencement of arbitral proceedings is concerned, it is not necessary that arbitral proceedings must be pending or that a notice invoking arbitration should have been issued before an application u/s 9 is filed. *M/s. Sundaram Finance Ltd. Vs. M/s. NEPC India Ltd.*, . In a subsequent decision of the Supreme Court in *Firm Ashok Traders and Another etc. Vs. Gurumukh Das Saluja and Others etc.*, , the Supreme Court observed that u/s 9, the Court formulates an interim measure to protect the right under adjudication before the arbitral tribunal from being frustrated. The reliefs which the Court may allow to a party under clauses (i) and (ii) of Section 9 were held to flow from the power vesting in the Court exercisable by reference to "contemplated", "pending" or "completed" arbitral proceedings, the Court being conferred with the same power for making specified orders as it has for the purpose of and in relation to any proceedings before it. At the same time, the Supreme Court held that a party having succeeded in securing an interim measure of protection before the arbitral proceedings cannot afford to stand by and sleep over the relief because the relationship between the order u/s 9 and the arbitral proceedings would stand snapped and the relief allowed to the party shall cease to be an order made "before" that is, in contemplation of arbitral proceedings. Consequently, when approached by a party by an application u/s 9, the Court would be justified in calling upon the party to explain how and when it proposes to commence arbitral proceedings and the scheme of Section 9 would obligate the Court to do so.

12. Two facets of Section 9 merit emphasis. The first relates to the nature of the orders that can be passed under clauses (i) and (ii). Clause (i) contemplates an order appointing a guardian for a minor or a person of unsound mind for the purposes of arbitral proceedings. Clause (ii) contemplates an interim measure of protection for: (a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement; (b) securing the amount in dispute in the arbitration; and (c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration; (d) an interim injunction or the appointment of a receiver; and (e) such other interim measure of protection as may appear to the Court to be just and convenient. The underlying theme of each one of the sub-clauses of clause (ii) is the immediate and proximate nexus between the interim measure of protection and the preservation, protection and securing of the subject-matter of the dispute in the arbitral proceedings. In other words, the orders that are

contemplated under clause (ii) are regarded as interim measures of protection intended to protect the claim in arbitration from being frustrated. The interim measure is intended to safeguard the subject-matter of the dispute in the course of the arbitral proceedings. The second facet of Section 9 is the proximate nexus between the orders that are sought and the arbitral proceedings. When an interim measure of protection is sought before or during arbitral proceedings, such a measure is a step in aid to the fruition of the arbitral proceedings. When sought after an arbitral award is made but before it is enforced, the measure of protection is intended to safeguard the fruit of the proceedings until the eventual enforcement of the award. Here again the measure of protection is a step in aid of enforcement. It is intended to ensure that enforcement of the award results in a realisable claim and that the award is not rendered illusory by dealings that would put the subject of the award beyond the pale of enforcement. Now it is in this background that it is necessary for the Court to impart a purposive interpretation to the meaning of the expression "at any time after the making of the arbitral award but before it is enforced in accordance with section 36". u/s 36, an arbitral award can be enforced under the CPC in the same manner as if it were a decree of the Court. The arbitral award can be enforced where the time for making an application to set aside the arbitral award u/s 34 has expired or in the event of such an application having been made, it has been refused. The enforcement of an award enures to the benefit of the party who has secured an award in the arbitral proceedings. That is why the enforceability of an award u/s 36 is juxtaposed in the context of two time frames, the first being where an application for setting aside an arbitral award has expired and the second where an application for setting aside an arbitral award was made but was refused. The enforceability of an award, in other words, is defined with reference to the failure of the other side to file an application for setting aside the award within the stipulated time limit or having filed such an application has failed to establish a case for setting aside the arbitral award. Once a challenge to the arbitral award has either failed u/s 34 having been made within the stipulated period or when no application for setting aside the arbitral award has been made within time, the arbitral award becomes enforceable at the behest of the party for whose benefit the award enures. Contextually, therefore, the scheme of Section 9 postulates an application for the grant of an interim measure of protection after the making of an arbitral award and before it is enforced for the benefit of the party which seeks enforcement of the award. An interim measure of protection within the meaning of Section 9(ii) is intended to protect through the measure, the fruits of a successful conclusion of the arbitral proceedings. A party whose claim has been rejected in the course of the arbitral proceedings cannot obviously have an arbitral award enforced in accordance with Section 36. The object and purpose of an interim measure after the passing of the arbitral award but before it is enforced is to secure the property, goods or amount for the benefit of the party which seeks enforcement.

13. The Court which exercises jurisdiction u/s 34 is not a court of first appeal

under the provisions of the Code of Civil Procedure. An appellate court to which recourse is taken against a decree of the trial Court has powers which are co-extensive with those of the trial Court. A party which has failed in its claim before a trial Judge can in appeal seek a judgment of reversal and in consequence, the passing of a decree in terms of the claim in the suit. The court to which an arbitration petition challenging the award u/s 34 lies does not pass an order decreeing the claim. Where an arbitral claim has been rejected by the arbitral tribunal, the court u/s 34 may either dismiss the objection to the arbitral award or in the exercise of its jurisdiction set aside the arbitral award. The setting aside of an arbitral award rejecting a claim does not result in the claim which was rejected by the Arbitrator being decreed as a result of the judgment of the court in a petition u/s 34. To hold that a petition u/s 9 would be maintainable after the passing of an arbitral award at the behest of DIPL whose claim has been rejected would result in a perversion of the object and purpose underlying Section 9 of the Arbitration and Conciliation Act, 1996. DIPL's application u/s 9, if allowed, would result in the grant of interim specific performance of a contract in the teeth of the findings recorded in the arbitral award. The interference by the Court at this stage to grant what in essence is a plea for a mandatory order for interim specific performance will negate the sanctity and efficacy of arbitration as a form of alternate disputes redressal. What such a litigating party cannot possibly obtain even upon completion of the proceedings u/s 34, it cannot possibly secure in a petition u/s 9 after the award. The object and purpose of Section 9 is to provide an interim measure that would protect the subject-matter of the arbitral proceedings whether before or during the continuance of the arbitral proceedings and even thereafter upon conclusion of the proceedings until the award is enforced. Once the award has been made and a claim has been rejected as in the present case, even a successful challenge to the award u/s 34 does not result an order decreeing the claim. In this view of the matter, there could be no occasion to take recourse to Section 9. Enforcement for the purpose of Section 36 as a decree of the Court is at the behest of a person who seeks to enforce the award.

14. For this reason, we are of the view that the judgment and order of the learned Single Judge granting an ad-interim measure of protection was wholly an error and in excess of jurisdiction. The learned Single Judge in the present case, it must be noted, found that prima facie there appeared substance in the submission of MSEGCL that proceedings u/s 9 would not be maintainable in the absence of an executable award in favour of DIPL. Despite this, the learned Single Judge was completely in error in proceeding to decide as to what interim order could be passed to govern the rights of the parties pending the final hearing of the petition u/s 34. The learned Single Judge ought to have decided the preliminary issue as to the maintainability of the petition u/s 9, particularly having come to the conclusion prima facie that there was substance in the objection to the maintainability of the petition. On the issue of maintainability, we hold that the petition which was filed u/s 9 by DIPL was not maintainable and

ought not to have been entertained.

15. Even otherwise, we have at the earlier stage of this judgment indicated the findings of fact which have been recorded by the arbitral tribunal in the course of the award. The tribunal has come to the conclusion that DIPL did not as a matter of fact erect a sufficient number of hoppers for collection of 3,000 metric tons of PFA per day; that DIPL did not erect any transport system for transferring 3,000 metric tons of PFA per day from the thermal power station to its factory and this was a vital element in the execution of the contract which was intended for preventing atmospheric pollution. The finding of fact is that under the contract, DIPL was initially to lift 1000 metric tons of PFA per day which quantity was to reach 3,000 metric tons of PFA per day in the next two years. As a matter of fact, DIPL could not lift more than 600 metric tons per day during the period. The arbitral tribunal found that on these facts, grant of specific performance would be unsound and unreasonable, besides being arbitrary. On these facts as found by the arbitral tribunal and particularly after the award which construed the terms of contract and entered a finding of fact on the basis of the evidence on record, the passing of any interim order was, with great respect, unwarranted. We clarify that these observations are only for the purpose of Section 9. They shall not come in the way of the disposal of the proceedings u/s 34 by the learned Single Judge.

16. For these reasons, we have come to the conclusion that: (i) The petition u/s 9 of the Arbitration and Conciliation Act, 1996 filed by DIPL was not maintainable; and (ii) In any event, no case was made out for grant of an interim measure of protection. The appeal filed by MSEGCL shall stand allowed in the aforesaid terms. The appeal filed by DIPL shall stand dismissed. There shall be no order as to costs.

17. On the conclusion of the judgment, learned Senior Counsel appearing on behalf of DIPL has sought an extension of the order dated 10 May 2012 which was passed in appeal. The learned Single Judge by his order dated 30 April 2012, while granting a stay to the operation of his order till 11 May 2012 had directed that the interim order which was already operating would continue to operate till then. In our view and having carefully considered the application for stay, there are circumstances which would weigh against the continuation of the interim order. First and the foremost, the arbitral Award contains a detailed and reasoned finding to the effect that DIPL was in breach of its contractual obligation and was unable to perform its part of the contract. Secondly, clause 11 of the agreement between the parties contemplates that it is terminable at will, with four months' notice on either side. To continue an interim mandatory order would militate against first principles. Thirdly, the grant of any interim protection would virtually tantamount to an interim specific performance of a contract which has been terminated on 23 November 2006 despite the fact that the arbitral tribunal on a considered view of the matter has come to the conclusion that no specific performance could be granted. DIPL has failed in its contractual obligation to

provide an important measure of environmental protection. Finally, this Court has come to the conclusion that the application u/s 9 was not maintainable. In the circumstances, the prayer for stay is refused. In view of the disposal of the appeals, the Notices of Motion in the appeals do not survive and are accordingly disposed of.