
(2012) 03 BOM CK 0132

In the Bombay High Court

Case No : Arbitration Petition (L) No. 280 of 2012

National Commodity and Derivative Exchange Ltd.

APPELLANT

Vs

Indian Exchange of Metal Ltd.

RESPONDENT

Date of Decision : 09-03-2012

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 2(1), 9
Civil Procedure Code, 1908 (CPC) — Section 19, 20

Citation : (2012) 03 BOM CK 0132

Hon'ble Judges : Anoop V. Mohta, J

Bench : Single Bench

Advocate : Vijay Thorat, assisted with Mr. Cyrus Ardeshir with Mr. Jayesh Ashar with Ms. Pratiksha Mody instructed by M/s. K. Ashar and Co, for the Appellant; Dinyar Madon a/w Mr. Kezer Kharawala instructed by R.K. Associates, for the Respondent

Final Decision : Allowed

Judgement

Anoop V. Mohta, J.—The Petitioner is a Multi Commodity Exchange (NCDEX) providing an online platform for trading in futures contracts of various commodities, including agricultural, bullion and metals, has invoked Section 9 of the Arbitration and Conciliation Act (for short "Arbitration Act") in view of arbitration clause in the agreement dated 18th July, 2008 (the agreement) read with letter/agreement dated 12th December, 2011 (the subsequent agreement) with the Respondent, Warehouse Service Provider, (IEM/Warehouse).

2. The necessary averments and the basic contents of the documents for adjudicating the issues raised are in paragraphs 9 to 17 of the petition and its reply, some are as under :

9 (i) The Respondent has been providing C & F services to the Participants for VAT and excise related compliances on the basis on its bilateral arrangements with such Participants.

(ii) The Petitioner being a commodity exchange provides process of settlement of trades under its Bye Laws and Regulations where under the sellers or Participants intending to sell commodity (which is steel in the present matter) deposit such commodity with the accredited warehouse. The buyers who purchase the commodity are required to take physical delivery from such accredited warehouse as per Bye Laws and Regulations of the Petitioner. The accredited warehouse is merely a place of delivery and the Respondent is merely a custodian of the commodity deposited by the sellers or Participants as stated above and the warehouse does not have any interest in such commodity. The Respondent is an accredited warehouse provider for steel commodity and is under obligation to deliver the commodity to the buyers.

(iii) The Petitioner states that with regards to payment of C & F charges by various Participants, including intermediary Participants who previously purchased and subsequently sold steel on the Petitioner's platform, to the Respondent as their C & F Agent, the Respondent had raised its alleged claim/dues and threatened to stop delivery of steel stock if such dues are not settled. In order to protect the interest of the Participants and to ensure settlement of transactions effected on the Petitioner's platform, the Petitioner although not privy or liable to the C & F arrangement, took upon itself to resolve the issue which was after protracted correspondence between the Petitioner and the Respondent settled vide understanding arrived at between them and as recorded in the Petitioner's letter bearing Ref. No. NCDEX/RRS/1212(A)2011 dated 12th December, 2011, copy of which is hereto annexed and marked Exhibit-B. The said letter bearing Ref. No. NCDEX/RRS/1212(A)2011 dated 12th December, 2011 is hereinafter referred to as "the said Understanding."

3. There were exchange of a number of correspondences for want of various clarifications and dispute. The parties thereafter exchanged e-mail's and letters of advocates, last was dated 20th February, 2012/18th January, 2012. As the Respondent failed to adhere to terms of the second agreement, the Petitioner invoked Section 9 petition. The Petitioner also averred in paragraph 17 as under:

17. In the aforesaid circumstances, the Petitioner submits that the Respondent has illegally sought to withhold the release of goods from the said Warehouse to the Participants to whom such delivery is due. The demand for payments made by the Respondent as indicated above are false as also in breach of the Warehousing Agreement and the subsequent understanding arrived at by the parties. The Petitioner further submits that the terms of the Warehousing Agreement clearly indicate that the Petitioner does not have any privity with regard to the goods stored in the Respondent's warehouse and the C & F Agent have any bailee's lien over the said goods, which have to be delivered to the (third party) Participants. The illegal actions of the Respondent are jeopardizing the working of the Petitioner.

4. Arbitration agreement

There exists an arbitration clause to settle the dispute arising out of the agreement. The clauses are as under :

11. DISPUTES WITH PARTICIPANTS

It is hereby agreed and confirmed between the parties that NCDEX would be confined to the role of accreditation of warehouses, assayers, finalising the delivery centers and stipulating procedure for delivery including electronic transfer system as may be put in place. While making their best efforts in addressing all pertinent issues between IEM in their capacity as warehouse and assayers and the participants of NCDEX, NCDEX shall not be responsible nor shall be party to any disputes between the participants of NCDEX and IEM and thus cannot be held liable for any dues/claims the said parties may have on each other.

12. ARBITRATION AND JURISDICTION

(i) In the case of any dispute or any difference between the parties arising out of or in relation to this agreement including but not limited to disputes or differences as to the validity of this agreement or interpretation of any of the provisions of this agreement or losses of damages arising under this agreement or assaying or indemnity, the same shall be resolved by mutual discussion. In the event that the dispute or event is not resolved by mutual discussion, the same shall be referred to an Arbitral Tribunal wherein, each party shall nominate an arbitrator and such arbitrators shall appoint a third presiding arbitrator. Such arbitration shall be governed under the provisions of Arbitration and Conciliation Act 1996 including its amendments for the time being in force. The venue of Arbitration shall be Mumbai and all matters arising out of such arbitration shall be subject to the jurisdiction of Mumbai Courts only.

21. GOVERNING LAW

This Agreement shall be governed by the substantive and procedural laws of India and the courts in Mumbai shall have exclusive jurisdiction on all matters arising out of this Agreement.

5. There is no specific arbitration clause incorporated in the subsequent agreement but there is a clear reference made to the agreement which provides, that even after expiry of stipulated period of three years the contract/obligations should continue till the complete delivery of the (ferrous metals) goods. Therefore, the Respondent is under obligation to complete delivery of goods until it is exhausted. The subsequent agreement endorse the same. There is no dispute with these documents, therefore, both the parties are under obligation to perform their respective part based upon these agreements till the goods lying in the warehouse are delivered completely. The submission that there exists no arbitration clause in the subsequent agreement and this amounts to no arbitration agreement between the parties, is unacceptable. The clauses and the commercial documents need to be read-together and not in isolation. In Reliance

Natural Resources Ltd. Vs. Reliance Industries Ltd. 2007 (Supp.) Bom. C.R. 925 I have already observed while dealing with the documents/agreement between the private parties as under :

91. In Life Insurance Corporation of India and Another Vs. Shri Dharam Vir Anand, , the Apex Court, while dealing with the construction of deeds and documents construing contractual clause, has observed as under:

..... In construing a particular clause of the contract, it is only reasonable to construe that the words and the terms used therein must be given effect to. In other words, one part of the contract cannot be made otiose by giving a meaning to the policy of the contract.

92. Recently, the Apex Court in (Commissioner of Income Tax, Kolkata Vs. Hoogly Mills Co. Ltd.), (2007) S.C.C. 571, while re-iterating the principle for interpretation of the agreement held that it has to be read as a whole.

93. Apart from that the following extracts from Chitty on Contracts (27th Edition), 1994 in para 12.053 is also useful:

Every contract is to be construed with reference to its object and the whole of its terms, and accordingly, the whole context must be considered in endeavouring to collect the intention of the parties, even though the immediate object of inquiry is the meaning of an isolated word or clause.

The subsequent agreement cannot be read in isolation to say that there exists no arbitration agreement between the parties. Therefore, Section 9 petition for any interim relief for protection or direction is maintainable. In the present case, considering the clear terms and conditions between the parties read together show that their exists arbitration agreement between the parties to settle the dispute arising out of the contracts in question.

6. Jurisdiction:

The Bye-laws/regulations" of NCDEX deal with and cover every aspect of commodities trading and clearing. The main place of business transaction of the Petitioner is at Mumbai. The parties have specifically agreed and as referred above that the courts in Mumbai shall have an exclusive jurisdiction to resolve dispute arising out of the agreements. The parties are fully aware that the Respondent"s warehouse is situated at Ghaziabad, has registered office at New Delhi and also the nature of online transactions. The Petitioner has made specific averments in the petition about the jurisdiction accordingly. The geographically located delivery centre for the commodities is not a important factor to decide the court"s jurisdiction in such cases. It is known to the trading and clearing member and their constituent/participants/investor apart from the warehouse service provider that it is to facilitate delivery of commodities when demanded. In view of clear agreement between the parties to settle their dispute in the Court of Mumbai that itself is sufficient to hold that this Court has jurisdiction to deal with the subject matter and also in view of the nature of transactions and

business of commodities trading online by the petitioner at Mumbai. The submission made by the Senior Counsel appearing on behalf of the Petitioner referring to Inter Globe Aviation Ltd. Vs. N. Satchidanand, whereby the Supreme Court while dealing with case under the Consumer Protection Act based upon section 19 and 20 of the CPC (for short "CPC") observed that the contractual clause seeking to exclude the jurisdiction of courts is invalid. This judgment is of a little assistance as that was not the case under Arbitration Act. The facts are distinct and distinguishable. The concept of specified "court" changes the situation.

7. The "Court" is defined u/s 2(1)(e) of Arbitration Act:

(2) (1) In this Part, unless the context otherwise requires,-

(e) "Court" means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any civil court of a grade inferior to such principal Civil Court, or any Court of Small Causes;

8. Considering the above provision and the scheme of Arbitration Act and as the part of cause of action arose in Mumbai, and as specifically agreed to settle their dispute through the Court of Mumbai, I am inclined to observe that this Court has jurisdiction. This itself is sufficient to consider the case of the Petitioner to grant and/or not to grant interim relief's or order's as prayed.

9. Leave under clause 12 of the Letters' Patent Act is not necessary :

The submission is also that the Petitioner has not sought a leave, under clause 12 of the Letters Patent Act before filing the petition, therefore, it should not be entertained. The reliance was placed on Kotak Mahindra Finance Ltd. Vs. T. Thomas Educational Trust & Others 2003 (5) BCR 579. There was no such agreed jurisdiction clause in that matter. At least the part cause of action arose within jurisdiction of this Court. The parties have specifically agreed for this Court's jurisdiction, which is permissible. The agreed clause and considering scope and the purpose of the nature of transactions. I am not inclined to accept in the present facts and circumstances that the leave is necessary. The Arbitration Act, nowhere provides such pre-requisite condition before filing petition u/s 9 of the Arbitration Act. The arbitration petition is not a suit. [Rajasthan State Electricity Board Vs. Universal Petro Chemicals Ltd., and Balaji Coke Industry Pvt. Ltd. Vs. Maa Bhagwati Coke (Guj) Pvt. Ltd.,].

10. The commodities futures and forward trading and the governing regulations":

The specified commodities futures and forward trading are governed by the policies issued by the Government of India. The forward market commission (FMC) provides and approve the bye-law's and regulations of exchanges. It prescribes various regulatory measures. The exchange is responsible for the

various contracts which are necessary to be executed by the exchange and the constituent/participants. There are other requirements including of warehouses" at different centre"s and, therefore, separate agreements with them. All other factors of the commodities are controlled and governed by the Essential Commodities Act, apart from Direct and Indirect Tax Laws, local laws and the policies. There are various factors which effect commodities trading including demand, supply and price and related aspect"s of financial/economic market.

11. The role of participants/investor and the warehouse :

The warehouse service providers like Respondent is also governed and controlled by bye-laws of exchange, apart from the contract between the parties. The warehouse receipt is recognised mode and important document for giving effect to receipt and/or delivery of the commodities and/or securities. The governing regulation itself recognises the importance of warehouse receipt as the necessary document upon which the warehouse, the exchange and the participants need to act. In all these documentation, in view the regulations and the contract, the role of the participants is quite limited. The participants never sign the agreement between the exchange and the warehouse. They are concerned with the timely receipt/delivery of the commodities, subject to the directions/instructions of the exchange and the requisite payment/charge"s.

12. The exchange and the warehouse provider"s obligation"s :

The respondent (IEM) has offered to provide warehouse/storage facilities and assaying services to the trading/clearing member/s and to the constituent/clients of trading/clearing members (participants) of Petitioner (NCDEX) which also include assaying, acceptance, storage and delivery of Commodities for the purpose of delivery on the Exchange platform as per the agreements. The Respondent subject to warehouse receipts and his entitlement/dues/charges is under obligation to receive and/or deliver the goods as directed. Specifically, when the participants wants to take physical delivery of the goods deposited and/or stored at IEM warehouse. The other provisions made in the contract whereby the Petitioner is entitled to export the goods either themselves or through any agency. The Respondent needs to maintain record of the commodities. It is also provided that any dispute arising out of variation in quality and quantity of commodities at the time of delivery shall be sorted out between the parties. In the event any discrepancy of the quality and/or quantity takes place by any participant or any agency authorised by NCDEX the rights are provided to NCDEX to get commodity sampled and re-assayed the same. The Respondent has also agreed to indemnify and keep indemnified NCDEX for any losses, damages and penalties including costs etc. incurred due to any difference in quality and quantity alleged or found in commodities deposited/lying in the warehouse and/or a consequence of any lapse or negligence or action or omission on their part. It is also provided that value of loss shall be arrived by replacement value of the commodities or the actual costs incurred by NCDEX, whichever is higher. NCDEX, is also in case of dispute between the warehouse and the participants, intervene

and try to settle the same. It is agreed and specifically mentioned that the role of NCDEX is confined to accrediting the warehouse, authorising the warehouse to appoint/engage assayer out of the panel approved by NCDEX and prescribing storage and assaying charges.

13. It is relevant to note as per the agreement all the rights and obligation of the parties shall continue to bind parties till the rights of the parties are completely discharged. Therefore, even after expiry of three years or termination of any of services the agreement should continue on the terms and conditions contained and mentioned in respect of remaining services availed by the NCDEX without prejudice to the rights of the agreed parties pertaining to the conditions of service. This agreement also provide that respective parties shall be under obligation and liable to respective payments of all Central or State and local taxes in accordance with the provisions of NCDEX. Both the parties are under obligation to perform their legal and contractual obligations. It revolve around the storage, receipt and delivery of goods of the participants/investor.

14. In this background the subsequent agreement dated 12th December, 2011 plays important role to adjudicate and/or decide the issues raised in the present petition. Admittedly, their arose dispute between the parties but realising the nature of the contract and transaction the parties have entered into the subsequent agreement by referring to the steel stock position of 22nd October, 2011. As per the record of the Petitioner 4837 MT was lying with the Respondent and therefore agreed after due discussion to continue with the respective obligations by crystalising respective obligations in following terms:

1. The Exchange has agreed to pay a total amount of Rs. 1,77,17,979 (Rupees One Crore Seventy-seven lakh seventeen thousand nine hundred seventy nine only) towards the claims of IEM for dues from intermediary sellers and buyers towards C & F charges and Service Tax as full and final settlement to facilitate release of the said steel stock to the respective present owners.

2. IEM hereby agrees and undertakes to release all the stock of steel belonging to various participants on the Exchange or beneficiary holders, as per contract specifications upon receipt of payment in the manner agreed herein.

3. IEM shall release all steel stocks to the present owners in the manner as mentioned further herein provided, the Exchange pays the amount mentioned in para 1 above in the following manner :

(a) Rs. 1,00,00,000 (Rs. One crore only) on December 13, 2011.

(b) Rs. 9,87,312/- (Rs. Nine lakh eighty seven thousand three hundred twelve only) on December 15, 2011 towards 614 MT of steel already released till December 10, 2011; and

(c) An amount at the rate of Rs. 1608/- per MT shall be paid for release of 200 MT of steel everyday to the holders of the said steel stock, subject to the total payment to IEM s per 3 (a), (b) and (c) being limited to Rs. 1,77,17,979/-.

Provided however that in the event of non release of the said quantity of 200 MT on any day, the Exchange shall adjust the prorata amount for the non-deliveries to be effected on the subsequent day.

4. Subject to payment of amount by the Exchange as stated in para 3 (a) above, IEM shall release a minimum of 200 MT (Two hundred Metric Tons) of stocks of steel per day (on all days, except Sundays) with effect from December 13, 2011 and confirm remat on the system of the Exchange.

5. IEM has confirmed to have already received an amount of Rs. 53,18,931/- towards C & F charges from some of the participants which has been adjusted while arriving at the amount stated in Para 1 above. Any amount received from any intermediary seller or buyer over and above this amount shall be reported to the Exchange immediately upon receipt and such amounts shall be deducted from the amounts payable by the Exchange.

6. IEM shall replace the existing Bank Guarantees held by NCDEX with a cash deposit of Rs. 30 lacs which shall be refunded by NCDEX to IEM as under :

a. Rs. 10 lacs on completion of delivery of 1600 MT out of 4837 MT lying at the warehouse as on October 22, 2011.

b. Rs. 10 lacs on completion of delivery of an additional quantity of 1600 MT.

c. Balance Rs. 10 lacs on completion of all deliveries out of the warehouses.

7. The VAT differences claimed by IEM shall be separately arrived at and reconciled by the parties. IEM agrees that all information and documents relating to intermediary sellers with regard to VAT differences shall be made available to the Exchange and thereafter within a period of one week, the VAT difference amount shall be paid by the Exchange after completing reconciliation. In case any VAT difference amount is paid by any party directly to IEM, the VAT difference claim of IEM shall be adjusted by such amount.

15. It appears that inspite of repeated communications and e-mail"s, the Respondent could not fulfill the conditions though agreed. The statement is made at the bar that the Petitioner have complied with substantial part by making requisite payments and they will comply with the future obligation also. The Respondent had also based upon these delivered some portion of the goods but later on refused to deliver the goods even as per the subsequent agreement, basically, on the ground of non receipt of the payment as demanded. The Petitioner disputed this payment on various grounds. The Petitioner, however, agreed to make balance payments to avoid further complications as it is affecting investors/participants business and the trading. The problems have been increasing as the Respondent refused the deliver the goods to the participants though they have warehouse receipts/documents.

16. Withholding of goods by the warehouse is impermissible :

The agreements show that both the parties are not the owner of the goods.

Considering the nature of transaction and if the participants wants the delivery of the goods subject to warehouse receipts, the Respondent has no choice but to release the goods as agreed subject to requisite charges, if any. The Petitioner wants to continue with the transactions and basically the receipt/delivery of the goods. The Respondents has no authority to withheld these goods. The dispute with regard to requisite charges even, if any, either can be settled through negotiations and if not possible, as agreed, by settling through the arbitrator. The Petitioners have already nominated their arbitrator. They are awaiting response from the Respondents. There is no question of detention of the goods considering the nature of commodities trading transaction as such detention of goods certainly hamper and effect online trading business of the commodities. The whole business get affected if no timely delivery is made of the goods when demanded by the participants. The commodity trading through such exchange has impact on the fluctuating market conditions of the day and/or the time. The purpose gets hampered of the participants and/or of the trader, if he does not get the delivery when demanded. The requirement of the regulation to appoint warehouse at respective area alongwith other services, is recognised mode to make timely delivery of goods to make trading effective and purposeful. The warehouse provider's role as recorded above is quite limited. They cannot retain goods of the participants only because there is some dispute with regard to payment and/or non payment of respective charges. They are only trustee of the goods. There is no question of any lien over the same. The Petitioner, as recorded above have made substantial payment. The dispute so raised including of quantity which according to me, needs to be settled through the arbitrator, but that itself should cannot give and/or entitle the Respondent to retain the goods and/or refuse to deliver the goods to the participants when they demand.

17. It is relevant to note here that the Respondents in their affidavit in paragraph 14, specifically accepted their obligations and expressed their readiness and willingness to perform their part and even ready to deliver the goods whatever available, though reference is made to the loss in quantity due to lapse of time and valuation. Therefore, it appears that both the parties have intention to perform their part as per the subsequent agreement. The matter was in fact adjourned for settlement, however, the parties were unable to arrive at any settlement, therefore, the question is whether the Petitioner has made out the case u/s 9 of the Arbitration Act to grant prayer as prayed.

18. The Participants" (third party) rights though not party to the arbitration agreement :

Learned senior counsel appearing for the Respondents further submitted that the goods which are lying with them will not be transferred or they will not create third party interest thereon and, therefore, there is no question of granting any relief to the Petitioner as it is practically nothing but a relief in favor of the participants (third party), who are not party to the arbitration clause and to this petition.

19. As recorded, both the parties have knowing fully the nature of transaction and the fact that the Respondents' warehouse is situated at Ghaziabad signed the agreement's to perform their respective obligations on the basis of exchange regulations. The Respondent has now agreed to perform its part, inspite of dispute, and accordingly, expressed the willingness to continue with the same as averred in the affidavit in reply. There was no objection of any kind raised at any point of time, that he is not liable to deliver the goods to participants, who are admittedly not party to the agreements or in the proceedings. There is no dispute that the participants, are involved but basically that is not relevant factor, considering the contract between the parties and respective obligations so referred above. The third party like participants even if are benefited that itself cannot be reason to overlook the respective obligations as agreed and the nature of business in question.

20. It is settled that section 9 of the Arbitration Act needs to be read with the provisions of CPC (for short "CPC"). All the principles which are relevant for granting interim and or mandatory injunction and directions to be taken note of while passing such interim or final order if a case is made out. The Court u/s 9, in the given case is also empowered to grant mandatory order such direction to see that the contract between the parties, implemented basically when it affects the other person or people at large, though they are not party to the arbitration agreement. In my view, therefore, the Petitioner has made out the case for grant of relief as it goes to root of the contract between the parties. Both the parties have expressed their willingness to perform their part of obligations. All these objections with regard to; non-existence of the arbitration clause; or the jurisdiction; non-joinder of parties; or no relief against third party; and the Petitioner is not empowered and/or cannot be permitted to ask for relief for and on behalf of the participants, who are third parties, in my view, in the present facts and circumstances, are untenable.

21. The case for grant of relief prayed :

The another factor is that commodity trading through internet or online marketing and selling of specific commodities all these are recent innovations. The Petitioner has office in Mumbai and they have number of branches and/or exchanges throughout India. They have registered traders and/or participants of various types. We cannot overlook such online dealings and its effect, referring to cause of action and/or jurisdiction and/or settlement of dispute between trading parties. The jurisdictional boundaries of internet transactions are unrestricted and undefined. In the present case we are concerned with dispute with regard to exchange and warehouse provider in view of the specific agreements with regard to settlement of dispute in court and/or tribunal in Mumbai. There is no reason at this stage the Court u/s 9 cannot pass any order/direction in the interest of justice, considering the principle's of equity, balance of convenience, "just and convenient" and prejudice to the people at large including the participants/investors. The conduct of the Respondent is also relevant factor which goes

against him. Having once agreed receive/delivery of goods, knowing fully the nature of transactions and now to retain those goods, which do not belong to both the parties, is totally in breach of contracts. Therefore, if proper measures are not taken by the Court, at this stage, this will effect the commodity trading market on internet. It is very clear that the dispute so raised by the Respondents is of non payment of dues and adjustment of accounts/payments, can be resolved through the arbitration procedure adopted by the parties. Therefore, at the end of day the Respondent is entitle for compensation, if there is any loss caused to him. By taking overall view of the matter I am of the view that the Respondent cannot retain the goods as per the exchange regulations and agreements in question.

22. No question of lien over such goods :

Such transactions and the contracts are controlled, and permitted by the regulations of the exchange. The Respondent just cannot be permitted to claim lien over such goods for any purpose, when the receipt or the delivery of goods are the basic requirements of such commodity trading. There is no question of any lien over such goods by the warehouse keeper/the Respondent in view of the agreements itself.

23. The receipt/delivery of goods in accordance with law :

It is made clear both the parties are bound by the provisions of laws, therefore, delivery or receipt of goods are always subject to those provisions and statutory liabilities and obligations. The Court cannot grant any order to release those good/goods without complying with the laws and the bye-laws, if any.

24. Order :

Resultantly, the petition is allowed in terms of prayer clause 26(i) which reads thus :

(i) Pending the arbitration between the Petitioner and the Respondent, an order directing the Respondent to release the goods stored in the said Warehouse viz. Warehouse situate at AN-37 to AN-38, AN-123 to AN-132, Massori Gulawati Road, UPSDIC Industrial Area, Ghaziabad in favor of the Participants who have a valid and lawful claim for such release and list whereof is annexed and marked as Exhibit "FF".

However, it is subject to the following conditions:

(a) Both the parties shall perform their respective obligations including as per the subsequent agreement/letter dated 12th December, 2011. The amount if already paid, will be adjusted and so also the delivery of goods, if any.

(b) The parties are at liberty to exchange the delivery schedule and/or respective time-table.

(c) The dispute including of monetary claims be settled by the arbitral tribunal.

All points are kept open.

(d) The parties are at liberty to settle the matter and apply for appropriate order/direction before the tribunal and/or the Court.

(e) The petition is accordingly allowed. No costs.