

Akshay Aluminium Alloys Llp vs Securities Exchange Board Of India & Ors on 27 April, 2020

Author: C.Hari Shankar

Bench: C. Hari Shankar

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 3008/2020 & CM APPLs. 10428-29/2020
AKSHAY ALUMINIUM ALLOYS LLP Petitioner
Through: Mr. Ravichandra Hegde with
Ms. Malvika Kalra, Adv.

versus

SECURITIES EXCHANGE BOARD
OF INDIA & ORS. Respondents
Through: Mr. Arvind P. Datar, Sr. Adv.
with Mr. Pratap Venugopal and
Ms. Surekha Raman, Adv. for
R-1
Mr. Sandeep Sethi, Sr. Adv.
with Mr. Amar Gupta, Mr.
Divyam Agarwal, Ms. Pallavi
Kumar and Mr. Anuj Aggarwal,
Advs. for R-2
Mr. Shyam Divan, Sr. Adv. with
Mr. Amar Gupta, Mr. Divyam
Agarwal, Ms. Pallavi Kumar
and Mr. Anuj Aggarwal, Advs.
for R-3

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER

% 27.04.2020

1. Allowed, subject to all just exceptions.
2. The Applications are disposed of.

W.P.(C) 3008/2020

1. The petitioner claims to be aggrieved by MCX Circular No. MCX/MCXCL/282/2020, dated 21st April, 2020, issued by the Multi Commodity Exchange Clearing Corporation Limited, i.e. Respondent No. 3 herein.
2. The impugned Circular fixes the Due Date Rate of Crude Oil futures contract, which have expired on 20th April, 2020 as (-) 2884/- per barrel.
3. Mr. Hegde, learned counsel for the petitioner, has advanced various submissions to impugn the said Circular, which primarily hinge on the practical hardship that his client is facing as a consequence of the Circular.
4. I may note, here, that, despite repeated queries from the bench of this Court, my attention has not been invited to any statutory provision, or even to any administrative instructions, which stand infringed by the impugned Circular.
5. Mr. Arvind Datar, learned Senior Counsel for the SEBI (Respondent No.1), advances various preliminary submissions, including certain serious preliminary objections which, in his submission, would merit outright dismissal of this writ petition. He submits that the petition is bad for want of territorial jurisdiction, inasmuch as no part of cause of action has arisen within the jurisdiction of this Court, and all the concerned respondents, against whose action the petitioner claims to be aggrieved, are situated in Mumbai. He submits that various other persons, who are also aggrieved by the impugned decision, have, in fact, moved the Bombay High Court, and it is the petitioner alone who has chosen to approach this Court.
6. Mr. Datar further submits that the present dispute is entirely within the realm of contract, and does not constitute one of these species of contractual disputes in which a writ court could legitimately exercise jurisdiction, as envisaged by the judgment of the Supreme Court in *Joshi Technologies v. Union of India* 1, in which report Mr. Datar places especial reliance on paras 56 to 69 and 70.5.
7. Mr. Datar further submits that Respondents. 2 to 4 do not fall within the territorial jurisdiction of this Court, as they are neither State nor public authority within the meaning of Article 12 of the Constitution of India.
8. He also seeks to point out that, in fact, the impugned Circular does not bear any statutory character, and is only by way of a communication of the Due Date Rate, as fixed by the New York Mercantile Exchange (NYMEX). He submits that such a Circular cannot be tested by a writ court, under Article 226 of the Constitution of India.
9. Mr. Datar also submits that the petitioner has an efficacious (2015) 7 SCC 728 alternative remedy, by way of arbitration, available to him, which also bears the statutory imprimatur of the Securities Contract (Regulation) Act, 1956.

10. Mr. Datar points out, finally, that, though the writ petition avers that the impugned Circular infracts various statutory provisions, it does not draw attention to any rule, regulation or administrative instruction, which is violated.

11. Mr. Sandeep Sethi, learned Senior Counsel, representing the Respondent No.2, submits that the appropriate remedy, for the petitioner, would be by way of an appeal under Section 23(L) of the Securities Contract (Regulation) Act, 1956, and not by way of a writ petition, invoking Article 226 of the Constitution of India.

12. Learned Senior counsel has also submitted that necessary parties, who would be affected by the grant of the relief sought in the writ petition, have not been implemented and that, even on this score, the writ petition is bound to fail.

13. These submissions, in my view, are substantial and, while I am not inclined to dismiss the present writ petition, in limine, would require to be answered, comprehensively, by the petitioner.

14. In the circumstances, issue notice on the writ petition to the respondents to show cause as to why rule nisi be not issued, returnable on 24th June, 2020.

15. Notice is accepted by Mr. Pratap Venugopal, learned counsel on behalf of Respondent No.1 and Mr. Amar Gupta, learned counsel on behalf of Respondent Nos.2 and 3.

16. Counter affidavit, in response to the writ petition, be positively filed within a period of four weeks with advance copy to the petitioner, who may file rejoinder thereto, if any, within two weeks thereof.

CM APPL. 10428/2020 (for stay)

1. I have heard learned counsel for the petitioner, as well as learned Senior Counsel for the respondents, at length.

2. The petitioner prays for stay of operation of the impugned Circular, dated 21st April, 2020. However, keeping in mind the multifarious objections raised by the respondents, which would require to be answered by the petitioner, as also because the writ petition has failed to disclose any provisions, statutory, or otherwise, which the impugned Circular allegedly infracts, and, additionally, bearing in mind the fact that the dispute essentially involves the rate at which the transactions are to be effected, and is, essentially, therefore, in the nature of a contractual financial dispute, I am not inclined to grant any ad interim relief in this matter.

3. The application for stay is, accordingly, dismissed.

C.HARI SHANKAR, J APRIL 27, 2020 r.bararia