

Ashwini Mehra vs Indian Oil Corporation Limited & Ors on 22 April, 2020

Author: C.Hari Shankar

Bench: C. Hari Shankar

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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 17th April, 2020

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W.P.(C) 2966/2020 & CM APPLs. 10297-99/2020

ASHWINI MEHRA

..... Petitioner

Through:

Mr. Rajiv Nayar, Sr. Advocate
with Mr. Kartik Nayar, Ms.
Anindita Roychowdhury, Ms.
Vatsala Rai and Mr. Raghav
Chadha, Advs.

versus

INDIAN OIL CORPORATION
LIMITED & ORS.

..... Respondents

Through: Mr. V.N.Koura, Mr. Siddharth
Baruah and Mr. Ankur Mittal,
Advs.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T (ORAL)

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17.04.2020

CM APPL.No. 10298/2020

Allowed, subject to all just exceptions. Application is disposed of.

W.P.(C) 2966/2020

1. This matter has been taken up for hearing on video conferencing, consequent to listing thereof having been allowed by the Registrar of this Court.

2. This writ petition, filed by Mr. Ashwini Mehra, as a Resolution Professional of M/s. Punj Lloyd Limited (PLL) under Article 226 of the Constitution of India, essentially seeks issuance of appropriate writ, quashing a communication, dated 10th April, 2020, addressed by the Indian Oil Corporation Limited (IOCL) to the Central Bank of India, which has resulted in a further communication, dated 11th April, 2020 from the Central Bank of India to the petitioner, as well as a

communication dated 12th April, 2020, from the IDBI Bank Ltd. to the petitioner. By these communications, the IOCL is seeking to invoke certain bank guarantees, which were submitted by the petitioner, in accordance with the terms of the contract between PLL and IOCL, relating to the Haldia Refinery Project.

3. Mr. Nayar, at the very outset, submits that he is being constrained to approach this Court only because of certain unavoidable circumstances, in which his client finds itself placed, owing to the present n-COVID-2019 pandemic crisis, which has global implications, and to which India has also, unfortunately, fallen prey.

4. Of the three bank guarantees, forming subject matter of the present proceedings, Mr. Nayar submits that two bank guarantees are to expire on 26th September, 2020, whereas the third bank guarantee is to expire on 25th September, 2020, and that, as per the terms of the bank guarantees, the IOCL could raise claims, thereagainst, till 2021. Mr. Nayar has also sought to submit that the time for completion of contract stands extended till 30th June, 2020, by the IOCL.

5. Even while ventilating these submissions, Mr. Nayar candidly conceded that he is not seeking any adjudication thereon, by this Court at this stage. He essentially draws my attention to an order dated 13th December, 2019, passed by the National Company Law Tribunal hereinafter referred to as "NCLT") in CA - 2823(PB)/2019, which, incidentally, was a litigation between the present petitioner and the respondent, in which the petitioner sought stay against invocation of the other bank guarantees. By its order dated 13th December, 2019, the NCLT injuncted encashment of the bank guarantees, forming subject matter of the said proceedings. That order was carried, before this Court at the instance of IOCL by way of WP(C) 13774/2019. Vide order dated 23rd December, 2019, passed by a Division Bench of this Court (to which I was a Member), this Court relegated the IOCL to its remedies against the order of NCLT before the National Company Law Appellate Tribunal (NCLAT).

6. Mr. Koura submits that, consequent upon the said order, the IOCL has moved an application before the NCLT, seeking vacation of the interim order passed by it, on the ground that the NCLT did not possess the jurisdiction to pass the said order. However, it is not in dispute that the said plea is yet to be heard and decided as of today, therefore, the order dated 13th December, 2019 (supra), passed by the NCLT continues to remain in force. By the said order, the NCLT has exercised jurisdiction and stayed the invocation of the bank guarantees, submitted by the PLL, though the IOCL, through Mr. Koura has serious misgivings regarding the propriety of such exercise.

7. Mr. Nayar's submission is that, his client, in the present case, too, intends to approach the NCLT and seeks an injunction against the IOCL from encashment/invocation of three bank guarantees, forming subject matter of this writ petition, but that, owing to the lockdown, announced by the Central Government, as a consequent upon the n- COVID-2019 crisis, which is to continue in force till 3rd May, 2020 as of now, it is not in a position to do so. Mr. Nayar has invited my attention to a notice, dated 22nd March, 2020, issued by the NCLT, which, as he submits, has been extended thereafter. According to the said notice, offices of the NCLT are to remain closed till 31st March, 2020. Mr. Nayar submits that this period has been extended, in view of continuing lockdown, which

presently, is to remain in force till 3rd May, 2020. The notice of the NCLT also states that, with regard to unavoidable urgent matters, an application by aggrieved parties by email to the Registry, NCLT, Chennai. After service of notice to the other side, the Acting President of the NCLT, sitting singly at Chennai could examine and pass necessary orders on Wednesday and Friday. Mr. Nayar submits that his client addressed an email to the NCLT at Chennai, as directed by the aforesaid notice dated 22nd March, 2020, but is yet to receive any response thereto. In the meanwhile, he points out, IOCL has already invoked the aforesaid three bank guarantees by way of communications dated 10th April, 2020 and 12th April, 2020, to which reference has already made hereinabove, though they are yet to be encashed, in that the moneys covered by the said back guarantees have not been transferred to the account of IOCL.

8. In the circumstances, Mr. Nayar only seeks a limited amnesty for his client by way of a restraint against the IOCL, from encashing the aforesaid three bank guarantees, till expiry of one week from lifting of the lockdown, imposed by the Central Government, which is presently in force till 3rd May, 2020

9. On this submission being put to him, Mr. Koura, even while expressing his difficulty in conceding thereto, submits that even if this Court is inclined to grant in such limited relief to the petitioner, it ought to be clarified that such relief is granted to the petitioner only in view of the stalemate, with respect to the petitioner's inability to move the NCLT at present, and should not be treated as an expression of opinion, even tentative, regarding the merits of the case or the entitlement, of the petitioner, to any injunction against invocation or encashment of the bank guarantees as sought.

10. The submission appears, to me, to be eminently reasonable.

11. Mr. Nayar, too, does not object thereto.

12. In this view of the matter, I do not think it is necessary to keep this writ petition pending any further before this Court. Accordingly, this writ petition is disposed of by granting limited relief, to the petitioner, to the extent that, till the expiry of period of one week from the lifting of the lockdown, imposed by the Central Government, consequent to n-COVID-2019 pandemic, the IOCL shall remain enjoined from encashing/invoking the aforesaid three bank guarantees, i.e. Bank Guarantee No. 0346415BG0000105 dated 9th December, 2015 for an amount of 14,73,82,051/- issued by Respondent No. 2, Bank Guarantee No. 160127IBGA00005 dated 25th February, 2016 for an amount of 29,47,64,102/- and Bank Guarantee No. 160127IBGA00014 dated 19th April, 2016 issued by Respondent No. 3 for an amount of 49,44,58,134/-, till the expiry of one week from the lifting of the lockdown imposed by the Central Government, which is presently in force till 3rd May, 2020.

13. It is made absolutely clear that this Court has not entered into the merits of the matter, though this Court has recorded the submissions of Mr. Nayar, and that no observation in this order should be treated as a reflection, even prima facie, regarding the merits of the case or the entitlement of the petitioner, to any injunction against invocation or encashment of the bank guarantees in question.

14. Subject to the above clarification, this writ petition is disposed of in the above terms with no order as to costs.

CM APPL. Nos. 10297/2020 and 10299/2020

1. In view of the judgment passed in the writ petition, these applications are disposed of.

C.HARI SHANKAR, J.

APRIL 17, 2020 r.bararia