

Airport Authority Of India vs Bhadra International India Pvt Ltd & Ors on 20 February, 2019

Author: G.S.Sistani

Bench: G.S.Sistani, Jyoti Singh

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ FAO(OS) (COMM) 313/2018, C.M.54702/2018
AIRPORT AUTHORITY OF INDIA Appellant
versus
BHADRA INTERNATIONAL INDIA PVT LTD & ORS.
..... Respondents

+ FAO(OS) (COMM) 314/2018, C.M.54710/2018
AIRPORT AUTHORITY OF INDIA Appellant
versus
BHADRA INTERNATIONAL (INDIA) PVT LTD & ORS.
..... Respondents

Present: Mr.Parag Tripathi, Sr.Adv. with Ms.Sonali Kr.Singh and Mr.Rajat Dasgupta, Advocates for the appellant in both the matters.
Mr.Ashish Mohan, Mr.Mohit Kumar, Mr.Shashwat Panda and Mr.Akshit Mago, Advocates for the respondents in both the matters.

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

% 20.02.2019

1. The present appeals arise out of two orders dated 28.09.2018 and 18.12.2018 passed by a learned Single Judge of this Court in O.M.P. (COMM) 414/2018 & O.M.P.(I) (COMM) 378/2018 on an application filed by the respondents under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act'). It may be noted that the said application under Section 9 of the Act was filed by the respondents post the award having been rendered. On 28.09.2018, the learned Single Judge passed the following order:

"2. Issue notice. Mr. Singh accepts notice on behalf of the respondent.

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3. Reply, if any, be filed within four weeks.

4. The learned senior counsel appearing for the petitioners submit that the petitioners will pay, for the moment, royalty at rate of 13% calculated on the actual turnover.

5. Insofar as the deferential amount is concerned (which for the moment, is calculated on the basis of the amount that would become payable, if royalty were to be paid at the rate of 31.81% on the actual turnover as against the royalty which the petitioners seek to pay, that is, at the rate of 13% on actual turnover), the petitioners submit that they will furnish the bank guarantees to the satisfaction of the Registrar General of this Court. It is ordered accordingly.

5.1 This arrangement will kick in from 1.10.2018.

6. I may also note that it is the stand of Airport Authority of India that the petitioners were required to pay royalty at the rate of 31.81%, albeit, on minimum gross turnover of Rs.126 crores.

6.1 This aspect of the matter will be examined at the time when Section 34 petition is heard and adjudicated upon by the Court.

7. Liberty is also given to the Airport Authority of India to approach the Court, in case any arrears are payable in respect of royalty calculated on actual turnover at the rate of 13%.

8. Subject to the aforesaid directions being complied with by the petitioners, Airport Authority of India will consider the bid, if any, tendered by them, qua tender(s) which are likely to be floated in 2018-19.

9. Renotify the matters on 7.2.2019."

2. The second order under challenge is an order dated 18.12.2018 in O.M.P.(I) (COMM) 378/2018 passed by the learned Single Judge on an application being I.A. No.17418/2018 filed by the appellant herein for modification. We are informed that the application under Section 9 of the Act as also the objections to the award are being heard by the learned Single Judge FAO(OS) (COMM) Nos.313/2018 & 314/2018 page 2 of 3 on day-to-day basis. In our considered opinion, as the impugned order dated 28.09.2018 was only an interim order and arguments are being heard on the application itself as well as the arguments are being heard in the petition filed under Section 34, no further orders are required to be passed in these appeals.

3. Liberty, as prayed, is granted to the parties to address their arguments on all issues and raise all grounds available to them before the learned Single Judge in accordance with law.

4. Both the appeals stand disposed of.

5. Pending applications being C.M.Nos. 54702/2018 & 54710/2018 stand disposed of.

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