

World Window Infrastructure Pvt. Ltd vs Central Warehousing Corporation on 21 August, 2020

Author: C. Hari Shankar

Bench: C. Hari Shankar

\$~1(original side)

* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ ARB. A. (COMM.) 16/2020 & I.As. 7105-7107/2020
WORLD WINDOW INFRASTRUCTURE PVT. LTD.

..... Appellant

Through: Mr. Akhil Sibal, Sr. Advocate
with Mr. Prashant Mehta,
Ms. Ishita Choudhry,
Mr. Shantanu Prashar and
Ms. Sonali Malik, Advs.
versus

CENTRAL WAREHOUSING CORPORATION

..... Respondent

Through: Mr. A.K. Ganguli, Sr. Adv. with
Mr. Shaiwal Srivastava, Adv.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER

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21.08.2020
(Video-Conferencing)

1. After hearing, Mr. Akhil Sibal, learned Senior Counsel for the appellant and Mr. A.K. Ganguli, learned Senior Counsel for the respondent for some time, it transpires that, of a total amount of 6,50,77,125/-, which had been secured by the appellant by way of bank guarantees, furnished to the respondent, bank guarantees worth 6,17,37,892/- stand encashed, and bank guarantees worth 33,39,233/- furnished by the appellant, alone remained with the respondent, as on date. Mr. Akhil Sibal has drawn my attention to the fact that, before the learned Sole Arbitrator, the appellant had also sought stay of operation of a letter, dated 23rd June, 2020, which called on the appellant to furnish further bank guarantee(s) of 3,13,84,325/-, failing which action, in terms of the contract between the appellant and the respondent, was threatened. Anticipating that such action would be coercive in nature, the appellant had prayed for a restraint, against the respondent, from initiating coercive action against the appellant.

2. Mr. Sibal has also drawn my attention to para 54 of the response, filed by the respondent to the third application, under Section 17 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as the "1996 Act"), preferred before the learned Sole Arbitrator, which reads thus:

"The Respondent's assertion in paragraph 5 of the Third Application that there has been any breach of the oral assurance given by the learned Senior Counsel for the Claimant is also wrong and denied. The letter dated 23.06.2020 merely informed the break-up of amounts realized from bank guarantees that had been adjusted towards Variable Fee/Fixed Fee and further demanded outstanding amounts as per the invoice raised by the Claimant in accordance with the Contract. Had it been the case that the Claimant would have intended to breach the oral assurance, it would have straight away invoked other BGs towards outstanding amount as on 23.06.2020 instead of demanding it from the Respondent. The Claimant and the Counsel have utmost respect for this Hon'ble Tribunal and shall never breach any assurance that may be given before the Hon'ble Tribunal. In any event, the Respondent itself do not consider issuance of demand letter by Claimant- a "coercive action" as it states in paragraph 5 that such an action "can amount to coercion". The Claimant respectfully submits that no coercive action has been taken by the Claimant and therefore, it cannot amount to coercion."

3. As against this, Mr. Ganguli submits that all other persons, similarly situated, have been paying the required minimum guaranteed throughput (MGT), payable to the respondent, and that the appellant alone was defaulting in that regard. Mr. Ganguli submits that as a result, the respondent is not able to realise the MGT, which is payable by the appellant every month, who, is seeking to draw advantage from the present COVID-2019 pandemic, suo motu decided to revise the scheme of payment of the MGT, otherwise payable monthly, to annual basis which, according to Mr. Ganguli, was totally unconscionable in law. Mr. Ganguli submits that, therefore, the appellant should be directed to continue to pay the MGT, on a monthly basis, so that the respondent is not prejudiced.

4. Mr. Akhil Sibal suggests that the present appeal may itself be set down for final hearing, on any convenient date, as exchange of pleadings is not necessary.

5. The suggestion of Mr Sibal, in my view, has merit. Given the fact that, out of the total bank guarantee of 6,50,77,125/- furnished by the appellant, bank guarantees to the extent of 6,17,37,892/- already stand encashed by the respondent and keeping in view the tone and tenor of para 54 of the reply of the respondent, to the appellant's application under Section 17 of the 1996 Act, I am of the opinion that it would be appropriate, rather than taking up this appeal for admission and grant of ad interim reliefs, to fix the appeal itself for final hearing, so that a quietus is achieved to the controversy.

6. In view thereof, list the appeal for final disposal at the end of the board on 17th September, 2020.

7. Till the next date of hearing, the respondent would not take any coercive action against the appellant, for reason of non-furnishing of monthly MGT by the appellant. However, should the appeal, for any reason, not be heard on the next date, this court would consider whether this order is required to be continued or not, given the comparative merits of the stands of both sides.

C. HARI SHANKAR, J AUGUST 21, 2020/kr