

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 20902 OF 2017

LMJ INTERNATIONAL LTD.

.....APPELLANT(S)

VERSUS

DANKUNI STEELS LIMITED & ORS.

.....RESPONDENT(S)

J U D G M E N T

A.K. SIKRI, J.

There is some litigation pending between the appellant herein and respondent Nos. 1 to 4. Though, it is not necessary to state in detail the nature of dispute between them, some aspects thereof which are relevant for this case shall be taken note of at the appropriate stage. At this juncture, it is pertinent to note that the Division Bench of the High Court in those proceedings between the appellant and respondent Nos. 1 to 4 had passed direction for sale of 10000 Metric Tons (MT) of Metallurgical Coke (Met Coke) by public auction. The Special Officer was appointed for this purpose who conducted the sale. Four bids were received. Bid of respondent No. 5 was the highest as it offered

the price of Rs.14000/- per MT. By the impugned order dated May 15, 2017, the High Court has accepted the said offer after rejecting the objections of the appellant. The appellant herein feels aggrieved by the acceptance of that offer by the High Court.

2) The relevant facts which need to be noticed for resolving the controversy are stated below:

Respondent No. 2 herein is Handling-cum-Clearing Agent for and on behalf of respondent No. 1 and respondent No.4. On the intimation given by respondent No. 4 that some consignment of Met Coke was arriving at Vishakapatnam Port, respondent No. 2 was given instructions to clear the consignment on his behalf. The appellant herein, which is an export house, claimed that it had a title over 10000 MT of the aforesaid consignment of Met Coke out of the entire consignment. Goods were cleared by respondent No. 2 and the cargo was stored at the custom bonded warehouse. However, respondent No. 2 turned down the request of the appellant to keep separate stock of 10000 MT of Coke over which it was making his claim. This led to filing of application by respondent No. 2 under Section 9 of the Arbitration and Conciliation Act, 1996 in which certain orders were passed. Respondent No. 1 also filed Civil Suit No. 17 of 2013 seeking

decree for delivery of entire consignment. These proceedings travelled upto the High Court wherein order dated July 29, 2015 was passed giving directions to sell 10000 MT of Met Coke out of the aforesaid stock. The High Court in that order noted that the issue as to whether the appellant had justified claim over 10000 MT of Met Coke or not is to be decided by the Court after trial. Since no definite conclusion could be arrived at this stage on the basis of affidavits alone, the High Court deemed it proper that the said quantity, namely, 10000 MT of Coke be sold and the proceedings thereof be kept apart so that this money is ultimately handed over to the parties succeeding in the suit. The relevant portion of the directions contained in the order dated July 29, 2015 is as under:

“We are also of the view that in view of the vagaries of the market and the likelihood of price of coke going down and to avoid further escalation demurrage charges it would be prudent to sale 10000 MTs of coke out of the remainder stock to secure the claim of R-2 (LMJ). Appellant and/or R-4 (Concast) shall be at liberty to take delivery of remainder of the goods after clearing of the customs duty and port charges thereon in accordance with law.

In this backdrop, we are of the opinion that a Special Officer be appointed to inspect the aforesaid godowns and make an inventory of the goods lying therein and thereafter to take steps for sale of 10000 MTs of coke out of the stock lying at R-5 and Ripley godown. The sale price of the aforesaid consignment after clearance of customs duty and port charges thereon shall be deposited by the special officer with the Registrar, Original Side, who shall keep the same in an interest

bearing fixed deposit account in a nationalized bank subject to the result of the suit. The appellant and/or R-4 (Concast) shall be at liberty to take delivery of remainder of the stock lying in the godowns after clearing the customs duty and port charges thereon, if any, in accordance with law. This order shall not preclude R-1 (Sarat) from taking steps for recovery of its handling and other service charges in accordance with law, if so advised.”

- 3) Pursuant thereto, the Special Officer got public notice published in the daily newspapers ‘The Hindu’ and ‘Andhra Jyoti’ for sale of 10000 MT of coke fixing reserved/base price of Rs.13000 per MT. Four offers were received along with 10% of earnest money. All these four bids were submitted by the Special Officer with his report to the High Court on April 3, 2017. Offer of respondent No.5 herein at Rs.14000 per MT was the highest.
- 4) Before the High Court could consider these offers, one M/s. Suyati Impex Pvt. Ltd. intervened and requested the High Court that it should be permitted to bid. The Court vide order dated April 24, 2017 permitted him to participate and deposit the earnest money by April 28, 2017 by extending the time of submission of bids upto April 30, 2017. However, said Suyati Impex Pvt. Ltd. failed to give earnest money. In these circumstances, report was given by the Special Officer that M/s. Suyati Impex Pvt. Ltd. did not participate in the bidding process.

In the aforesaid backdrop, bid of respondent No. 5 remained the highest bid. However, the appellant opposed the acceptance of the said bid with the contention that one Siona Enterprise had appeared before the Court in the meantime and offered price of Rs.14500 per MT inclusive of taxes, custom duty, Value Added Tax, port charges etc. Objection to the bid made by respondent No. 5 was also raised on the ground that the paid amount of Rs.14000 per MT was, in fact, less than the reserve price inasmuch as the aforesaid amount offered by respondent No. 5 was inclusive of all taxes etc. and once those taxes are reduced from the said amount, it was much less than Rs.13000 per MT which was the reserved price.

- 5) The High Court refused to consider the bid of Siona Enterprise on the ground that it was made after a lapse of 20 days from the last date of submitting the bids thereby seeking to reopen the entire process, which was not permissible. Insofar as objection of the appellant in respect of bid of respondent No. 5 is concerned, as per the High Court, it is the Special Officer who was to pay the statutory duties and taxes etc. On this ground rejecting this objection of the appellant as well, the High Court has given its imprimatur to the bid of respondent No. 5.

6) Mr. Ajit Kumar Sinha, learned senior counsel appearing for the appellant, at the outset, submitted that when the instant matter was taken up by the Court during vacation on May 29, 2017, learned counsel for Respondent No. 5 had made a categorical statement that Respondent no. 5 wanted to withdraw from the auction with liberty to approach Special Officer appointed by the Calcutta High Court. Having withdrawn this offer, Respondent no. 5 had no right to now contend that he was still interested in accepting auctioned material. He further pointed out on the same day, the learned counsel of Respondent No. 5 appeared later and made a statement that his first statement was that he should be permitted to withdraw the amount deposited by Respondent no.5. However, this was done in the absence of counsel for the appellant though his appearance was recorded wrongly. In these circumstances, matter was mentioned again on June 06, 2017 by Mr. Sinha and the Court clarified that Respondent No. 5 had not only sought permission to withdraw from the auction but also to withdraw the amount which he had initially deposited with his bid. He, thus, submitted that in view of the aforesaid statement on behalf of respondent No.5 itself, his offer needs to be rejected.

7) On merits, Mr. Ajit Kumar Sinha, argued that the impugned order of the High Court was flawed for two reasons, viz.:

- (i) The High Court committed an error in observing that the bid amount offered by Respondent no. 5, i.e., 14000/- per MT was more than the reserve price fixed. He submitted that no doubt the reserve price was 13000/- per MT but it was exclusive of all taxes and port charges etc. He drew our attention to the valuation report dated September 21, 2016 which was prepared by the Surveyors and Assessors fixing the reserved price at Rs. 13000/- per MT and submitted that this was based on the cost of Russian Origin Imported Coke. He pointed out that various charges and taxes were in the neighbourhood of Rs. 5100/- and if they are deducted from the price offered by respondent no. 5, it stood reduced to Rs. 8900 approx. The appellant has given the calculations of these taxes which are filed along with the special leave petition paper book as Annexure P-12. On that basis, it was argued that the net price offered by Respondent no. 5, excluding charges and taxes, comes to much less than Rs. 13000/- MT.

(ii) His second submission was that in the matter of auction through court, basic principle which is to be kept in mind is that the property to be auctioned fetches maximum price. According to him, the High Court ignored this principle by discarding the offer made by Siona Enterprise which had offered the price of Rs. 14,500/- per MT exclusive of other charges and taxes.

8) Mr. Shyam Diwan, senior counsel appearing for respondent no. 5 argued, *per contra*, that both the submissions were untenable. As per him, in the order dated July 29, 2015 passed by the High Court charges and taxes were to be borne by the Special Officer and not the bidder. This fact was duly taken note of in the impugned order while rejecting the submission of the appellant to this effect. Insofar as bid of Siona Enterprise is concerned, argument of Mr. Diwan was that that was made in the court by the said party which was much after the last date of submission of bids. Moreover, there was no seriousness shown in making that offer as application was filed through an advocate which contained that offer wherein it was only stated that if an opportunity is given to Siona Enterprise it would be in a position to offer Rs. 14500/- per MT. Again without depositing 10% of the

offer value, only a statement was made that the intending bidder was willing to deposit that amount immediately with Special Officer. It was contended that such an offer was no offer in the eyes of law.

9) Insofar as dispute about the withdrawal of bid by Respondent no. 5 in the form of statement given by its counsel in the Court on May 29, 2017 is concerned, Mr. Shyam Diwan argued that the statement by the counsel for Respondent no. 5 was made in mistaken belief as the respondent no. 5 only wanted to withdraw the amount. He submitted that since the bid of Respondent no. 5 was for a total sum of Rs. 14,00,00,000/- (Rs. 14 crores only) and 1,40,00,000/- (one crore forty lakhs only) thereof was deposited as EMD (10% of the bid amount) after the acceptance of a bid by the High Court. Respondent no. 5 had also deposited the balance amount of Rs. 12,60,00,000/- (twelve crores and sixty lakhs only). Intention was to withdraw said amount of Rs. 12.60 crores only since this Court had granted stay of the order of the High Court on May 25, 2017. In fact, only this amount was withdrawn thereafter leaving Rs. 1,40,00,000/- (one crore forty lakhs only) still in deposit as EMD amount. This was a *bona fide* statement made to withdraw the said amount as Respondent no.

5 did not want to block the said money till the settlement of dispute and he had all intention to give back the said money in case order of the High Court is sustained. Therefore, there was no intention to withdraw from the bid itself.

10) *Prima facie*, we find that the submission of Mr. Sinha is correct.

On May 29, 2017, when the matter was taken up for arguments on application filed by Respondent no. 5 for vacation of the stay, order was passed on May 25, 2017 and this Court was not inclined to vacate the stay, counsel for Respondent no. 5 had stated that he wanted to withdraw from the auction and this was recorded in the order. Thereafter, the learned counsel for Respondent no. 5 mentioned the matter at the end of the list but at that time Mr. Sinha, learned senior counsel for the appellant was not present. It is for this reason, he mentioned the matter on June 06, 2017 and on that day following order was passed:

“Shri Ajit Kumar Sinha, learned senior counsel has produced two orders dated 29th May, 2017 and stated that the second order was passed in his absence.

There seems to be some error in the second order passed on 29th May, 2017. When the first order was passed learned counsel stated on instructions received from the applicant that he will withdraw from the auction. At that time, Mr. Ajit Kumar Sinha, learned senior counsel was present and did not raise any objection.

On the same date, the matter was again mentioned by the learned counsel or the applicant and he had submitted that the applicant may also be permitted to withdraw the amount deposited by the applicant when he had submitted that bid.

When the second order was passed Mr. Ajit Kumar Sinha was not present and his presence was wrongly marked. However, no request was made on behalf of the applicant that he may be permitted to take part in the auction. We therefore, clarify that the applicant has been permitted to withdraw from the auction and also to withdraw the amount which he had initially deposited with his bid, but was not permitted to take in the auction.”

- 11) In this order which was passed in the presence of counsel for Respondent no. 5, it is specifically clarified that the Respondent no. 5 had been permitted to withdraw from the auction and also to withdraw the amount which he had initially deposited with his bid. Generally, one has to go by the record and as per the order sheet reproduced above it is noted that Respondent no. 5 had been permitted to withdraw from the auction as well.
- 12) Notwithstanding the above, we have examined the matter on merits as well and are of the opinion that the order of the High Court warrants to be interdicted. The valuation report has fixed the value at Rs. 13000 per MT as the price of the Met Coke which is exclusive of other charges and taxes etc. Therefore, the High Court is not correct in its observations that the amount was inclusive of other charges and taxes. May be some confusion is

created by the public notice that was published for inviting bids as it does not categorically state as to whether the reserve price of Rs. 13000/- per MT was exclusive of or inclusive of the taxes. Fact remains that when as per the valuation report, the reserve price is fixed at Rs. 13000/- per MT without taxes etc., the offer of Rs. 14000/- per MT, after excluding the taxes would be well below Rs. 13000/- per MT. Calculations which are given by the appellant of charges and taxes payable, which is not refuted by Respondent no. 5, are as under:

“CALCULATION (APPROX) BASIS RS. 14000 PER MT INCLUDING OTHER CHARGES

	Duty Calculation met Coke	PMT in INR	Value in INR
A	RATE GIVEN BY MS TYCOON QTY IN METRIC TON	14,000.00 1.00	
	PER MTS INR	14,000.00	14,000.00
B	LANDING CHARGES 1% ON IMPORTED PRICE	189.00	
	BCD 5% ON IMPORTED PRICE	945.00	
	CVD DUTY 6% ON IMPORTED PRICE	1,134.00	
	CUSTOMS EDUCATIONAL CESS 2%	41.58	
	CUS. SEC. & HIGHER EDU. CESS 1%	20.79	
	Energy Cess Rs. 400 / mt	400.00	
		2730.37	2730.37
C	A-B (ACTRUAL PRICE AFTER DEDUCTING THE DUTY)	11,269.63	
	VAT 5% ON BASIC VALUE	563.48	563.48
	PORT CHARGES (APPROX)	2000,00	
	TOTAL EXPENSES INCLUDING DUTY AND VAT	5,104.85	
			5,104.85
	NET REALISABLE VALUE AFTER DEDUCTING THESE EXPENSES		8,895.15

13) Therefore, it would be impermissible to accept the offer of Respondent no. 5 which turned out to be in the sum of Rs. 8895.15 paisa per MT.

14) It is clear that value of Met Coke is much higher (which gets substantiated by the valuation report as well) and may be for this reason Siona Enterprises came forward with much higher offer, i.e., Rs. 14,500/- per MT exclusive of taxes. Though, High Court was right in rejecting that offer on technical grounds, this fact is emphasised to point out that the goods in question are capable of receiving much higher price. It would, therefore, be in the overall interest of the parties to have fresh auction.

15) We, therefore, allow this appeal and set aside the order of the High Court. Special Officer is directed to get the valuation done again so that present day valuation of the goods is ascertained and on that basis fresh public notice for inviting the bids for the goods in question be issued with clear stipulation that the reserved price is exclusive of taxes. If it is possible to ascertain the exact amount of charges and taxes those may also be indicated in the public notice so that the intending bidders have

clear picture while making their bids. In view of the fact that fresh auction is ordered, the amount which was deposited by the auction purchaser shall be refunded.

There shall, however, be no order as to costs.

.....J.
(A.K. SIKRI)

.....J.
(ASHOK BHUSHAN)

**NEW DELHI;
DECEMBER 14, 2017.**

ITEM NO.1501

COURT NO.6

SECTION XVI

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No. 20902/2017

LMJ INTERNATIONAL LTD.

Appellant(s)

VERSUS

DANKUNI STEELS LIMITED

Respondent(s)

Date : 14-12-2017

This appeal was called on for pronouncement of judgment today.

For Appellant(s)

Mr. Deepak Goel, AOR

For Respondent(s)

M/S. Legal Options, AOR

Mr. Parijat Sinha, AOR

Ms. Reshmi Rea Sinha, Adv.

Mr. Rudra Dutta, Adv.

Mr. Ankur S. Kulkarni, AOR

Mrs. Pragya Baghel, AOR

Hon'ble Mr. Justice A. K. Sikri pronounced the judgment of the Bench comprising His Lordship and Hon'ble Mr. Justice Ashok Bhushan.

The appeal is allowed in terms of the signed non-reportable judgment.

(NIDHI AHUJA)
COURT MASTER

(MALA KUMARI SHARMA)
COURT MASTER

(Signed Non-reportable judgment is placed on the file.)