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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ OMP (ENF.) (COMM.) 19/2018, EX. APPL.(OS) 690/2021, EX. APPL.(OS) 1000/2021, EX. APPL.(OS)1006/2021, EX. APPL.(OS) 1069/2021, EX. APPL.(OS) 401/2022, EX. APPL.(OS) 3230/2022, EX. APPL.(OS) 3268/2022, EX. APPL.(OS) 3269/2022, EX. APPL.(OS) 3314/2022, EX. APPL.(OS) 3390/2022 & EX. APPL.(OS) 3395/2022

**ANGLO-AMERICAN METALLURGICAL COAL PTY. LTD**

..... Decree Holder

Through: Mr. Rajshekhar Rao, Sr. Advocate with Mr. Sumeet Kachwaha, Mr. Samat Singh Kachwaha, Ms. Ankit Khushu, Ms. Akanksha Mohan, Ms. Bhawana Chandaok and Ms. Aanya Saluja, Advocates

versus

**MMTC LTD**

..... Judgement Debtor

Through: Mr. Sanjay Jain, ASG with Mr. Sanat Kumar Kumar, Ms. Suman Yadav, Mr. Akhil Sahar, Mr. Rushab Agarwal, Mr. Shubham Airi, Mr. Arkaj Kumar and Ms. Tanya Aggarwal, Advocates

**CORAM:**  
**HON'BLE MR. JUSTICE CHANDRA DHARI SINGH**

**ORDER**  
**29.11.2022**

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1. During the course of arguments, Mr. Sanjay Jain, learned ASG



for the Judgment-Debtor has handed over an application. The same is taken on record. The instant application has been filed under the second proviso to Section 36(3) of the Arbitration and Conciliation Act, 1996 seeking stay on operation of the Award dated 12<sup>th</sup> May 2014 read with Sections 47 & 151 of the Code of Civil Procedure, 1908.

2. Learned ASG, while reiterating the averments made in the application, submitted as under:

- a) The Arbitral Award dated 12<sup>th</sup> May 2014 arises out of an agreement, which has been infected with the poison of fraud and corruption. The Judgment-Debtor being a Government of India enterprise functioning under the control of Department of Commerce, Ministry of Commerce and Industry, Government of India.
- b) Being a public sector undertaking the judgement debtor comprises a vigilance division, headed by Chief Vigilance Office (CVO), in accordance with the Vigilance Manual issued by Central Vigilance Commission (CVC). In light of the vigilance manual, it is the duty of the CVO to undertake surveillance and examination into the affairs of the Judgement-debtor, applicant herein.
- c) The Applicant had entered into a long-term agreement dated 7<sup>th</sup> March 2007, for the purchase of freshly mined and washed coal from the Petitioner in Australia. The dispute between the parties arose pertaining to the 5<sup>th</sup> delivery period i.e. 1<sup>st</sup> July, 2008 to 30<sup>th</sup> June, 2009 (later extended to 30<sup>th</sup>



September) and the same became the subject matter of the Award dated 12.05.2014.

d) The Vigilance Division of the Judgment Debtor pointed out the material irregularities with respect to import of coking coal from the Decree Holder. Pursuant to the examination of the abovementioned material, the Ministry of Commerce and Industry approved certain action delineated in the Office Memorandum dated 16<sup>th</sup> August 2022 which, in view of the fact that a formal complaint was yet to be filed, was placed before this Hon'ble Court in sealed covers on 29<sup>th</sup> August 2022.

e) On 2<sup>nd</sup> September 2022, a formal complaint highlighting the irregularities was filed with the office of the Central Bureau of Investigation, New Delhi and a follow-up complaint was filed on 23<sup>rd</sup> November 2022 to investigate the irregularities mentioned therein.

f) Upon a perusal of the agreement, for the 5<sup>th</sup> Delivery period, the suspicion arose as to why and how the three-fold price of USD 300 per metric ton came to be finalised for the said delivery period, increased from the rate of USD 96.40 per metric ton as applicable in the fourth delivery period.

g) The ICC Tribunal also stated in the Arbitral Award dated 12<sup>th</sup> May 2014 at pp.124 that the price for the 5<sup>th</sup> delivery period was agreed just two months after global financial crisis after collapse of Lehmann Brothers and the price agreed by the parties was significantly higher than the price for any preceding periods which in itself is extraordinary and what is even more



extraordinary is the request for reduction was made on the very same day on which the agreement for the 5<sup>th</sup> delivery period was reached.

h) The Agreement for 5<sup>th</sup> delivery period which forms the genesis of the Arbitral Award, appears to be a product of fraud, corruption and wrongdoing perpetrated by the Decree-Holder in collusion and active connivance with officials of MMTC and the same is under investigation by CBI.

i) It is settled law that fraud vitiates everything and as such any judgment obtained by fraud can be set aside since, *fraus et jus nunquam cohabitant* – fraud and justice can never dwell together. Therefore, in case, pursuant to the investigation by the CBI, the allegations raised against the Decree Holder are found to be true, the Arbitral Award would be rendered a nullity in law and would not be liable for execution.

j) The Decree-Holder has no assets in the jurisdiction of this Hon'ble Court, nor any offices or any senior management officials are based out of the territory of India. In case, the execution petition filed by the Decree Holder bearing no. EA(OS)No. 3230/2022, is allowed and consequently, the amount of Rs. 1087.76 Crores being public money, as currently deposited by the Judgment-Debtor, is released to the Decree-Holder, then under no circumstances, the Judgment-Debtor will be able to resituate the amount and will be remediless.

3. In view of the aforesaid, learned ASG prayed that the operation and implementation of Arbitral Award dated 12<sup>th</sup> May 2014 be stayed



until the CBI concludes its investigation into the matter.

4. *Per contra*, Mr. Rajshekhar Rao, learned Senior Advocate, on behalf of the Decree-Holder, appearing on advance notice, vehemently opposed the instant application. Learned senior counsel submitted that this application is not at all maintainable and prays for two weeks' time to file response to this application.

5. Heard learned counsels for the parties.

6. Let the reply be filed by the Decree-Holder within 2 weeks from today.

7. List on 14<sup>th</sup> December 2022.

**CHANDRA DHARI SINGH, J**

**NOVEMBER 29, 2022**

*Aj*/@dityak.