SUPREME COURT OF INDIA

Yograj Infrastructure Ltd.

Vs.

Ssangyong Engineering Construction Co. Ltd.

(Altamas Kabir and Cyriac Joseph JJ.)

15.12.2011

ORDER

ALTAMAS KABIR, J.

1. Interlocutory Application No.3 of 2011 has been filed by SSANGYONG Engineering Construction Company Limited in disposed of Civil Appeal No.7562 of 2011, seeking clarification and correction of certain clerical errors in the judgment passed by this Court on 1st September, 2011, under Order XIII Rule 3 of the Supreme Court Rules, 1966.

2. Mr. Dharmendra Rautray, learned Advocate-on-Record, who had earlier appeared for SSANGYONG Engineering Construction Company Limited, submitted that in paragraph 5 of the aforesaid judgment it had been mentioned that his clients had filed an application before the Sole Arbitrator on 5th June, 2010, for interim relief under Section 17 of the Arbitration and Conciliation Act, 1996. Mr. Rautray pointed out that the said application had been made not under Section 17 of the above Act, but under Rule 24 of the SIAC Rules and the same would be evident from the application made before the sole Arbitrator in SIAC Arbitration No.37 of 2010, by the Respondent, being Annexure-B to the present application.

3. Mr. Rautray then submitted that through inadvertence, in paragraph 35 of the judgment, it has been indicated that there was no ambiguity that the SIAC Rules would be the Curial law of the arbitration proceedings and that the same had been subsequently clarified in paragraph 37, wherein while indicating that the arbitration proceedings would be governed by the SIAC Rules as the Curial law, which included Rule 32, which made it clear that where the seat of arbitration is Singapore, the law of the arbitration under the SIAC Rules would be the

International Arbitration Act (Cap. 143A, 2002 Ed, Statutes of the Republic of Singapore). Mr. Rautray submitted that it was a clear case of inadvertence in paragraph 35 that needs to be clarified by indicating that the Curial law is the International Arbitration law of Singapore and not the SIAC rules.

4. It was also pointed out that in paragraph 36 of the judgment in the sentence beginning with the words In Bhatia International (supra)..., it had been indicated that while considering the applicability of Part I of the 1996 Act to arbitral proceedings where the seat of arbitration was in India, this Court was of the view that Part I of the Act did not automatically exclude all foreign arbitral proceedings or awards. Mr. Rautray submitted that as would be evident from reading the judgment as a whole, this Court had intended to indicate that where the seat of arbitration was outside and not in India, the said portion of the sentence should read where the seat of arbitration was outside India.

5. It was lastly submitted by Mr. Rautray that in paragraph 4 of the judgment it had been mentioned that an application had been filed by the Appellant under Section 9 of the 1996 Act before the District and Sessions Judge, Narsinghpur, Madhya Pradesh, whereas such an application had been made by the Respondent.

6. Mr. Rautray submitted that the aforesaid clarification and corrections are required to be made in the final judgment.

7. However, on behalf of Yograj Infrastructure Limited it was urged that except for the clarification sought for with regard to the Rules applicable to the arbitral proceedings, the other clarifications could be made.

8. Having regard to the submissions made on behalf of the respective parties, we are inclined to agree with Mr. Rautray that the corrections and clarifications sought for have to be allowed. In particular, the observations made in paragraphs 35 and 37, if read together, indicate that, although, when the seat of arbitration was in Singapore, the SIAC Rules would apply, the same included Rule 32 which provides that it is the International Arbitration Act, 2002, which would be the law of the arbitration. Accordingly, it is clarified that while mention had been made in paragraph 35 that the Curial law of the arbitration would be the SIAC Rules, what has been subsequently indicated in paragraph 37 of the judgment is that International Arbitration Act of Singapore would be the law of the arbitration.

9. The judgment and order dated 1st September, 2011, be read and understood on the basis of the corrections and clarifications hereby made in this order.

10. The interlocutory application filed on behalf of SSANGYONG Engineering Construction Company Limited, is allowed and disposed of accordingly.