2025 INSC 1279

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 13321 OF 2025
(@ SPECIAL LEAVE PETITION (CIVIL) NO. 14832 OF 2025)

MMTC LIMITED ...Appellant(s)

VERSUS

ANGLO AMERICAN METALLURGICAL COAL PVT. LIMITED ...Respondent(s)

J U D G M E N T

K.V. Viswanathan, J.

1. Leave granted.

2. The present appeal calls in question the correctness of the judgment dated 09.05.2025 passed by a learned Single Judge of the Delhi High Court in OMP (ENF.) (COMM.) No. 19 of 2018. By the said judgment, the High Court dismissed the objections filed by the appellant-MMTC Limited [for short "MMTC"] under Section 47 of the Code of Civil Procedure,

1908 [“CPC”] as well as an application under Order XXI Rule 29 of CPC seeking stay of the enforcement proceedings. The High Court further directed that the amount deposited by MMTC shall be withdrawn by the decree holder-Anglo American Metallurgical Coal Pvt. Limited [for short “the Anglo”] along with the interest accrued. Aggrieved, the appellant-MMTC is in appeal by way of special leave.

BRIEF FACTS:-

3. The respondent-Anglo, on 24.09.2012, invoked the arbitration clause in the Long Term Agreement [LTA] dated 07.03.2007 entered into between MMTC and Anglo. The claim in the arbitration was for damages on account of the unlifted quantity of coal contracted by the appellant-MMTC. The damages were computed based on the difference in the price between the contracted price of US$ 300 Per Metric Tonne [for short “PMT”] and the market price of US$ 126 PMT, multiplied by the unlifted quantity. In the arbitration, by an Award dated

12.05.2014, Anglo was awarded a sum of US$ 78.720 million along with interest and costs by a majority of 2:1.

4. By a judgment dated 10.07.2015, challenge under Section 34 of the Arbitration and Conciliation Act, 1996 [for short 'the A&C Act'] failed before a learned Single Judge of the High Court of Delhi. However, the Division Bench, by its judgment dated 02.03.2020, allowed MMTC's appeal under Section 37 of the A&C Act and set aside the arbitral Award along with the decision of the learned Single Judge. By a judgment of 17.12.2020, this Court allowed the Civil Appeal filed by Anglo and after setting aside the judgment of the Division Bench restored the judgment of the learned Single Judge and the arbitral Award.

5. On 29.07.2021, a review petition filed by MMTC, which was admitted on the limited issue of interest, was disposed of by reducing the *pendente lite* and future interest to 6%. The remaining findings were not disturbed. On 19.04.2022, a clarification application filed by MMTC was disposed of by clarifying that MMTC would be liable to pay interest @ 6%

from the date of reference till the date of payment and for the period from the date of breach till the date of reference, interest was to be paid @ 7.5%.

6. In the meantime, the respondent filed Execution Petition seeking enforcement of the Award. Post the disposal of the clarification application, on 20.07.2022, MMTC deposited a sum of Rs.1,087/- crores with the High Court of Delhi at New Delhi. On 28.11.2022, E.A. No. 3728 of 2022 in the Execution Petition was filed by MMTC seeking to stay the operation and implementation of the Award till the Central Bureau of Investigation [CBI] concludes its investigation into the matter. It transpires that on 02.09.2022 and 23.11.2022, complaints were filed by MMTC against persons including its erstwhile employees alleging fraud and collusion with the respondent in relation to the price fixed for coal for the 5th Delivery Period. On 09.01.2023, the CBI, it transpires registered a preliminary enquiry.

7. When the matter stood thus, on 10.01.2024, MMTC filed its objections under Section 47 of the CPC. In the objections, the primary contentions of MMTC were:-

7.1 Despite having complete knowledge of the recession in the market due to the collapse of the Lehman Brothers, the officials of MMTC in collusion and conspiracy with the officials of Anglo contracted the price of coal for the 5th delivery period at US$ 300 PMT. This price was 3 times more than the price of US$ 96.40 PMT which prevailed during the 4th delivery period.

7.2 Viewed in the background of the fact that Neelachal Ispat Nigam Ltd (for short the "NINL") for whom the coal was sourced did not have pressing requirement of the ultimately contracted quantity and considering the fact that there was room for negotiation of the price, the contention of collusion and conspiracy became stark.

7.3 The fraud could not be discovered earlier since Shri Ved Prakash, who was Chief General Manager in 2008, became Director (Marketing) in 2010 and ultimately

Chairman-cum-Managing Director in 2015, remained at the helm of affairs till 29.02.2020. The said officer was in control of the arbitral proceedings as well as at Section 34 and Section 37 stage.

7.4 When the Division Bench under Section 37 of the A&C Act set aside the Award on 02.03.2020, there was no occasion to examine the file to unearth the conspiracy. On 17.12.2020, when this Court set aside the judgment of the Division Bench and reinstated the Award, the matter was examined and on 24.02.2021, the then CMD of MMTC issued a confidential note requesting the Chief Vigilance Officer to seek permission of the Government of India to enquire into the matter.

7.5 It was thereafter that the matter was enquired into, and a decision was taken to refer the matter to the CBI and a preliminary enquiry came to be registered on 09.01.2023 by the CBI.

8. A detailed reply was filed by Anglo taking objections on maintainability and limitation. Primarily, the reply to the objections on the aspect of fraud were set out as under:-

8.1 Under the LTA entered into on 07.03.2007 between MMTC and Anglo, in each of the 5 delivery periods of the contract, Anglo was to supply specified quantity of coking coal.

8.2 After the 3rd delivery period, MMTC had an option to extend the Agreement by two years on condition that the option was to be exercised latest by 31.01.2007. This was as per Clause 1.3. The 3rd delivery period was to expire on 30.06.2007. Clause 1.3 reads as under: -

> "1.3 The PURCHASER had the option to extend the duration of the Agreement by two more years, at its sole discretion and the Purchaser to exercise its option for extending the Agreement by two more years or otherwise by 31st January, 2007. In case the PURCHASER decides to exercise such option, at its sole discretion, the Agreement shall have two more Delivery Periods as follows:
>
> Fourth Delivery Period: 1st July 2007 to 30th June 2008
> Fifth Delivery Period: 1st July 2008 to 30th June 2009"

8.3 The option was indeed exercised before 31.01.2007, on 30.01.2007, with the execution of the Memorandum of Understanding [MoU]. Option once exercised, MMTC was obliged to pick up the stipulated quantities at the stipulated price during the 4th and 5th delivery periods. The 4th delivery period was from 01.07.2007 to 30.06.2008 and the 5th delivery period was from 01.07.2008 to 30.06.2009. There could be postponement of delivery at the option of the purchaser for a period of three months following each delivery period.

8.4 As per the contract, the price was linked with the price fixed for two other Public Sector Undertakings, the Steel Authority of India Limited (SAIL) and the Rashtriya Ispat Nigam Limited (RINL). For SAIL and RINL, the prices were negotiated by the Government's Empowered Joint Committee and those contracts were long term contracts for purchase up to 2.5 million MT

per annum as opposed to MMTC's contracted quantity of 4,66,000 Metric Tonnes per annum.

8.5 Addendum No. 2 dated 20.11.2008 to the LTA was only to firm up the terms and conditions. Shri Ved Prakash was a junior member of the Committee in 2008 and by the time he became CMD of MMTC on 14.03.2015 (as mentioned in the objections), the Award had been pronounced by the Arbitral Tribunal on 12.05.2014.

8.6 The dispute commenced in March 2010 and culminated with the judgment of this Court on 17.12.2020 and the allegation of fraud is only to escape the liability under the Award.

9. By 28.10.2024, when the judgment was reserved in the Section 47 objections, MMTC had filed a Civil Suit praying that the Award dated 12.05.2014 is void and unenforceable. It further transpires that, on 29.07.2025, the said Civil Suit has been dismissed as not maintainable and a Regular First Appeal being RFA (OS) (Comm) No. 28 of 2025 is pending before the High Court.

10. On 11.11.2024, MMTC filed an application under Order XXI Rule 29 CPC. By the impugned judgment, the Executing Court dismissed the objections under Section 47 as well as the Order XXI Rule 29 application seeking stay of execution, pending the suit. Aggrieved, MMTC has filed the present Appeal, by way of special leave, and this is how the matter presents itself before us.

11. The High Court, by the impugned judgment, though held that the objections under Section 47 were not maintainable, made a brief observation on merits. It held that on merits that the acts of the Officers bind the Corporation as MMTC being a separate legal entity can only function through its Officers. Only a preliminary enquiry had been registered (when the proceedings were pending in the High Court) and, as such, there is no finding of fraud, cheating and collusion against the Officers of MMTC with the Officers of the decree-holder.

12. We have heard Mr. N. Venkataraman, learned Additional Solicitor General and Mr. Sanat Kumar, learned Senior Advocate, ably assisted by Mr. Akhil Sachar, Ms. Astha Tyagi,

Ms. Sunanda Tulsyan and Ms. Karishma Sharma, learned counsels for the appellant. We have also heard Mr. Neeraj Kishan Kaul and Mr. Jayant Mehta, learned Senior Advocates, ably assisted by Mr. Sumeet Kachwaha, Mr. Samar Singh Kachwaha, Ms. Ankit Khushu, Ms. Garima Bajaj, Ms. Akanksha Mohan, Mr. Pratyush Khanna and Ms. Ira Mahajan, learned counsels for the respondent.

13. We have carefully considered the submissions and perused the records of the case. Elaborate arguments were heard on 22.05.2025, 23.05.2025, 24.07.2025, 29.08.2025, 18.09.2025 and 25.09.2025, both on maintainability and merits of the Section 47-objections.

14. Before we proceed to consider the contentions, we need to notice one additional fact which transpired during the pendency of the proceedings. It appears that, on 20.07.2025, MMTC had filed a follow-up complaint with the CBI and the CBI, on 21.07.2025, registered an FIR. We will deal with the same during the course of the judgment.

QUESTION FOR CONSIDERATION: -

15. In the above background, the question that arises for consideration is – Whether the High Court was justified in not entertaining the objections filed by the appellant under Section 47 of CPC and in dismissing the same?

MAINTAINABILITY: -

16. Mr. N. Venkataraman, learned ASG, assailed the impugned judgment by first contending that the finding on maintainability is completely untenable in view of the judgment of this Court in Civil Appeal No. 2896 of 2024 [***Electrosteel Steel Limited (Now M/s ESL Steel Limited)*** vs. ***ISPAT Carrier Private Limited***[1]] decided on 21.04.2025. According to the learned ASG, this Court has held that the plea of nullity *qua* an Arbitral Award can be raised in a proceeding under Section 47 of CPC though the scope was very narrow.

[1] 2025 INSC 525

17. Before the High Court, considerable arguments were advanced on the question of maintainability of Section 47 objections under the CPC, once the award had been challenged and the Section 34 objection had been dismissed and sustained right up to the highest Court. The High Court held that if the objections under Section 47 are allowed to be entertained during the enforcement proceedings of an Award, it would effectively open a second round for challenging the Award. According to the High Court, this was not intended by the legislature and would defeat the purpose of the A&C Act, apart from delaying the finality of disputes.

18. Mr. N. Venkataraman, learned ASG, drew our attention to the judgment of this Court in ***Electrosteel (supra).*** In ***Electroteel (supra)***, certain arbitration proceedings between parties therein were commenced on 07.06.2017. On 27.06.2017, proceedings commenced under Section 7 of the Insolvency and Bankruptcy Code, 2016(IBC) against the appellant therein. The arbitration proceedings were kept in abeyance, due to the moratorium. The respondent therein

filed a claim before the resolution professional who partly admitted the claim. A resolution plan submitted by the successful resolution applicant therein was approved by the Adjudicating Authority on 17.04.2018 under Section 31 of the IBC. In the plan, 'nil' value was provided for the operational creditors. The approval of the plan attained finality right up to this Court and the challenge made by some other operational creditors were not fruitful.

19. The arbitrator, whose proceedings were kept in abeyance, resumed proceedings after the lifting of the moratorium and passed an Award on 06.07.2018 with the appellant therein Electrosteel not even contesting the proceedings. An award for a sum of Rs. 1,59,09,214/- along with interest was made in terms of Section 16 of the Micro, Small and Medium Enterprises Development Act, 2006 (for short 'MSME Act'). No challenge was made under Section 34. Execution came to be levied by the respondent therein, when appellant Electrosteel filed a petition under Section 47 CPC, contending that the Award was a nullity and is not executable.

The Executing Court dismissed the petition resulting in a challenge under Article 227 before the High Court. The High Court dismissed the Article 227-petition primarily holding that since arbitral proceedings were initiated prior to the insolvency resolution process, the arbitrator was not barred from proceeding.

20. Before this Court, apart from arguments on Section 31 of the IBC which provided for binding nature of the plan on all the stakeholders, Electrosteel also argued that it was not barred from challenging the award at the execution stage. The contention was that since the award was a nullity, even if the appellant had not filed a petition under Section 34 of the A&C Act, it would not foreclose them from challenging the award in the execution proceedings. It was argued therein that the Facilitation Council in the said case inherently lacked jurisdiction to arbitrate the claim of the respondent, post the approval of the resolution plan. The respondent therein contended that since the appellant-Electrosteel did not

challenge the award it was not open to them to raise a challenge to the award in the Section 47 proceeding.

21. In answering the issue about the maintainability of the objection under Section 47, this Court held that the High Court was correct insofar as it stated that plea of nullity *qua* an Arbitral award can be raised in a proceeding under Section 47 of CPC, but such a challenge would lie within a very narrow compass. This Court further held that in terms of Section 36 of the A&C Act, an Award can be enforced in accordance with the provisions of the CPC, in the same manner as if it were a decree of the Civil Court. This Court further held as under.

> "48. ……. Execution of decrees and orders is provided for in Order XXI CPC. The law is well settled that at the stage of execution, an objection as to executability of the decree can be raised but such objection is limited to the ground of jurisdictional infirmity or voidness. The law laid down by this Court *in Vasudev Dhanjibhai Modi* Vs. *Rajabhai Abdul Rehman,* (1970) 1 SCC 670*,* is that only a decree which is a nullity can be the subject matter of objection under Section 47 CPC and not one which is erroneous either in law or on facts. The aforesaid proposition of law continues to hold the field."

22. In conclusion, this Court on the said issue, held that objection to execution of an award under Section 47 was not

dependent or contingent upon filing a petition under Section 34. Ultimately insofar as ***Electrosteel (supra)*** was concerned, the appeal of Electrosteel was allowed in view of the provisions of the IBC, particularly, Section 30 and 31. It was found that the Facilitation Council did not have jurisdiction to arbitrate the claim after approval of the plan.

23. ***Electrosteel (supra)*** held that any challenge under Section 47 would lie within a narrow compass. It has also been held that at the stage of execution, an objection as to executability of the decree can be raised, limited to the ground of jurisdictional infirmity or voidness. It has been further held that errors of facts and law cannot be the subject matter of objection under Section 47.

24. In ***Vasudev Dhanjibhai Modi vs. Rajabhai Abdul Rehman[2],*** it was held that an Executing Court cannot go behind the decree. It was also held that where a decree is a nullity like, for example, in cases where it is passed without

[2] (1970) 1 SCC 670

bringing the legal representatives on record or made by a Court which inherently lacked jurisdiction, objections can be raised at the execution stage.

25. It should be pointed out that, in the present case, the objection is not based on the ground of any inherent lack of jurisdiction. What is really argued is that the Officials of MMTC committed fraud on MMTC, their employer and there was collusion and conspiracy between the Officials of MMTC and Anglo in pegging the price at US$ 300 PMT for the 5th delivery period. So, the argument on inexecutability of the decree was based on fraud committed by the Officials of MMTC on MMTC, by collusion and conspiracy resulting in a favourable Award for Anglo. It is also argued that fraud was discovered only after the Award was upheld by this Court.

26. Mr. Neeraj Kishan Kaul, learned senior counsel for Anglo, argued that objections under Section 47 were barred by law; that the A&C Act is a complete Code and Section 5 bars any form of judicial intervention other than what is expressly provided in the Act. According to the learned senior counsel,

the A&C Act contains a comprehensive mechanism not just for the conduct of arbitral proceedings but also for challenge to an execution of an arbitral award. Learned senior counsel contended that awards cannot be challenged by a sidewind in Section 47-proceedings. Mr. Kaul contended that the fraud alleged in the present case is a fraud on itself by the employees (on the MMTC) and is not a fraud on the Arbitral Tribunal. According to the learned senior counsel, fraud alleged is a fraud on the formation and validity of the underlying contract. Learned Senior Counsel also submits that these objections were never taken at any point in the earlier stage of litigation.

27. In response, Mr. N. Venkataraman, learned ASG drew our attention to a judgment of the English Court and to the following passage in ***Lazarus Estates Ltd.*** v. ***Beasley***[3], as cited in ***Ram Preeti Yadav*** v. ***U.P. Board of High School and Intermediate Education and Ors.***[4]:-

[3] (1956) 1 All ER 341
[4] (2003) 8 SCC 311

> "I cannot accede to this argument for a moment. No court in this land will allow a person to keep an advantage which he has obtained by fraud. No judgment of a court, no order of a minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything. The court is careful not to find fraud unless it is distinctly pleaded and proved; but once it is proved it vitiates judgments, contracts and all transactions whatsoever;"

28. Learned ASG also relied on the principle that fraud avoids all judicial acts, ecclesiastical or temporal and relied on the judgment in ***S.P. Chengalvaraya Naidu*** v. ***Jagannath and Ors.***[5], as cited in ***Ram Preeti Yadav (supra)***. Learned ASG further relied on ***Indian Bank*** v. ***Satyam Fibres (India) Pvt. Ltd.***[6], ***United India Insurance Co. Ltd.*** v. ***Rajendra Singh and Others***[7], and judgment of the Delhi High Court in ***National Projects Construction Corporation*** v. ***Royal Construction Company Private Ltd.***[8], to contend that fraud avoids all judicial acts and that fraud affects the solemnity, regularity and orderliness of the proceedings. By relying on ***Rajendra Singh (supra),*** it was contended that no Court or Tribunal can

[5] (1994) 1 SCC 1
[6] (1996) 5 SCC 550
[7] (2000) 3 SCC 581
[8] 2017 SCC Online Del 10944

be regarded as powerless to recall its own order if it is convinced that the order was wangled due to fraud or misrepresentation of such a dimension as would affect the very basis of the claim.

29. In ***Rajendra Singh (supra),*** while allowing the appeal of the Insurance Company to recall two awards of the Motor Accident claims Tribunal and permitting them to resist the claim on the ground of fraud, this Court opened the judgment with the following strong words:-

> **"2.** If what the appellant Insurance Company now says is true, then a rank fraud had been played by two claimants who wangled two separate awards from a Motor Accident Claims Tribunal for a bulk sum. But neither the Tribunal nor the High Court of Allahabad, before which the Insurance Company approached for annulling the awards, opened the door but expressed helplessness even to look into the matter and hence the Insurance Company has filed these appeals by special leave.
>
> **3.** "Fraud and justice never dwell together" (*fraus et jus nunquam cohabitant*) is a pristine maxim which has never lost its temper over all these centuries. Lord Denning observed in a language without equivocation that "no judgment of a court, no order of a Minister can be allowed to stand if it has been obtained by fraud, for, fraud unravels everything" (*Lazarus Estates Ltd.* v. *Beasley* : (1956) 1 All ER 341).
>
> **4.** For a High Court in India to say that it has no power even to consider the contention that the awards secured are the by-products of stark fraud played on a tribunal, the plenary

> power conferred on the High Court by the Constitution may become a mirage and people's faith in the efficacy of the High Courts would corrode. We would have appreciated if the Tribunal or at least the High Court had considered the plea and found them unsustainable on merits, if they are meritless. But when the courts pre-empted the Insurance Company by slamming the doors against them, this Court has to step in and salvage the situation."

30. Faced with this situation, Mr. Kaul submitted that even if the case is examined on merits, the MMTC has not made out any case, nor even a *prima facie* case, by establishing any fraud or collusion warranting a decision that the Award is inexecutable.

31. In the light of the judicial pronouncements discussed hereinabove, we are not inclined to dismiss the objections only on maintainability. Elaborate arguments spanning over several days have been heard on merits and we set out to examine the objection of the appellants on merits to see if any *prima facie* case of fraud is made out for the appellant to contend that the Award is inexecutable.

NATURE OF ALLEGATION OF FRAUD – BREACH OF FIDUCIARY DUTY: -

32. The fraud that is alleged in this case originates in the grievance of MMTC that its employees in senior managerial roles including directors on the Board committed a breach of fiduciary duty. According to MMTC, there was collusion and criminal conspiracy by them with the Officials of Anglo in fixing the contracted price for the 5th delivery period at US$ 300 PMT. MMTC contends that the market price was only US$ 96.40 PMT for the 4th delivery period. The further contention is that the contracted quantity was far in excess of what was in need for NINL for whom the coal was being sourced. They also seek to explain the delay in unearthing the fraud for the reasons adduced by them which have been discussed in the earlier part of the judgment.

33. It is important to recollect here that we are at a stage where the award has attained finality in view of the dismissal of the appeal by this Court in proceedings arising under Section 34 of the A&C Act. The initiation of the dispute was on

04.03.2010 and the judgment of this Court was delivered on 17.12.2020.

LEGAL FRAMEWORK TO DETERMINE BREACH OF FIDUCIARY DUTY: -

34. Before we discuss the nitty-gritty of the merits insofar as they are essential for adjudication of Section 47-objection to examine whether at all even a *prima facie* case is made out, it is important to set out the legal parameters as laid down in judicial precedents in cases involving breach of fiduciary duty. The broad framework as to what would constitute the breach of fiduciary duty and what are the legal parameters for deciding the same have arisen before courts across the globe in various fact situations. To understand the principles that would govern is even more important in a case like ours where parties have litigated for over a period of 15 years and the allegation of breach of fiduciary duty has cropped up after the Award has had the imprimatur of this Court.

35. As was rightly forewarned in ***Re Living Images Ltd.***[9], the first precaution to be taken is not to fall into the trap of being too wise after the event. In ***Re Living Images (supra)***, highlighting the need to discount the benefit of hindsight, the Court observed as under:-

> "I should add that the court must also be alert to the dangers of hindsight. By the time an application comes before the court, the conduct of the directors has to be judged on the basis of statements given to the Official Receiver, no doubt frequently under stress, and a comparatively small collection of documents selected to support the Official Receiver's and the respondents' respective positions. On the basis of this the court has to pass judgment on the way in which the directors conducted the affairs of the company over a period of days, weeks or, as in this case, months. **Those statements and documents are analysed in the clinical atmosphere of the courtroom. They are analysed, for example, with the benefit of knowing that the company went into liquidation. It is very easy therefore to look at the signals available to the directors at the time and to assume that they, or any other competent director, would have realised that the end was coming. The court must be careful not to fall into the trap of being too wise after the event.**"
>
> (Emphasis supplied)

36. It is always useful while adjudicating on alleged breach of fiduciary cases to remember the memorable words of Lord

[9] (1996) 1 BCLC 348

Davey in ***Dovey and The Metropolitan Bank (of England and Wales) Limited v. John Cory***[10]***:-***

> "I think the respondent was bound to give his attention to and exercise his judgment as a **man of business on the matters which were brought before the board at the meetings which he attended**, and it is not proved that he did not do so"
>
> (Emphasis supplied)

37. MMTC now launches a 'no holds barred attack' on most of the directors and senior managerial personnel who were in office from 2008-2009 right up to those who held office till 2020. The case projected is that the senior managerial personnel including the directors operated as a cabal to defraud MMTC and that it was only after this Court upheld the Award that an enquiry was launched and the fraud unearthed.

TEST OF A REASONABLY COMPETENT DIRECTOR: -

38. Before we examine the merits, we should also bear in mind the principle that in cases like this, a court cannot be swayed by what the Court thinks would have been a

[10] 1901 Appeal Cases 477

reasonable course of action for the director to adopt but the duty is to enquire whether on the available evidence before the Court to consider whether the course adopted by the director was one reasonably competent directors could have adopted. In ***Sharp and Ors. v. Blank and Ors,***[11] a judgment by Norris J in Chancery Division in the context of negligence the Court observed as under:

> "631. … in testing whether a director has been negligent the question is not simply what the Court thinks it would be reasonable for the director to have done; rather it is what the evidence before the Court establishes were the courses open to reasonably competent directors (the burden lying on a complainant to establish that the course of which complaint is made is not amongst them).
> 627. … When embarking upon a transaction a director does not guarantee or warrant the success of the venture. Risk is an inherent part of any venture (whether it is called 'entrepreneurial' or not). A director is called upon (in the light of the material and the time available) to assess and make a judgment upon that risk in determining the future course of the company. Where a director honestly holds the belief that a particular course is in the best interests of the company then a complainant must show that the director's belief is one which no reasonable director in the same circumstances could have entertained."

[11] (2019) EWHC 3096 (Ch)

RANGE OF REASONABLENESS - TEST

39. Dealing with the aspect of how the Court cannot second guess the directors by substituting its opinion and laying down that the enquiry should be whether the decision taken was within the range of reasonableness, it was held by the Court of appeal for Ontario in ***Maple Leaf Foods Inc. v. Schneider Corp.***[12], thus:

> "The mandate of the directors is to manage the company according to their best judgment; that judgment must be an informed judgment; it must have a reasonable basis. **If there are no reasonable grounds to support an assertion by the directors that they have acted in the best interests of the company, a court will be justified in finding that the directors acted for an improper purpose.**
>
> The law as it has evolved in Ontario and Delaware has the common requirements that the court must be satisfied that the directors have acted reasonably and fairly. **The court looks to see that the directors made a reasonable decision not a perfect decision. Provided the decision taken is within a range of reasonableness, the court ought not to substitute its opinion for that of the board even though subsequent events may have cast doubt on the board's determination. As long as the directors have selected one of several reasonable alternatives, deference is accorded to the board's decision……**

[12] 42 OR (3d) 177

This formulation of deference to the decision of the Board is known as the "business judgment rule". The fact that alternative transactions were rejected by the directors is irrelevant unless it can be shown that a particular alternative was definitely available and clearly more beneficial to the company than the chosen transaction''

(Emphasis supplied)

BUSINESS JUDGMENT RULE: -

40. The above decision also highlights the principle that as long as the decision taken falls within the range of options reasonably available, Court would defer to the decision of the Board under the ''Business Judgment Rule''. The said principle was also reiterated by the Supreme Court of Canada in ***Kerr v. Danier Leather Inc.,***[13] in the following words:

> ''On the broader legal proposition, however, I agree with the appellants that while forecasting is a matter of business judgment, disclosure is a matter of legal obligation. The Business Judgment Rule is a concept well-developed in the context of business decisions but should not be used to qualify or undermine the duty of disclosure. The Business Judgment Rule was well stated by *Weiler J.A. in Maple Leaf Foods Inc. v. Schneider Corp.* (1998), 42 O.R. (3d) 177 (C.A.): The court looks to see that the directors made a reasonable decision not a perfect decision. Provided the decision taken is within a range of reasonableness, the court ought not to substitute its

[13] (2007) 3 SCR 331 Canadian Supreme Court Reports

> opinion for that of the board even though subsequent events may have cast doubt on the board's determination. As long as the directors have selected one of several reasonable alternatives, deference is accorded to the board's decision ..."

APPLICATION OF THE LEGAL PRINCIPLES TO THE FACTS AT HAND

41. With the above legal principles in mind, it is time to apply the same to the facts of the case and consider the contentions raised by the respective parties. The dispute revolves around the 5th delivery period, i.e., from 01.07.2008 to 30.06.2009, as well as on the status and execution of Addendum No.2 dated 20.11.2008, to the LTA of 07.03.2007. A brief narration of the facts essential for appreciating this aspect of the controversy has also been discussed, while dealing with the rival contentions.

LONG TERM AGREEMENT (LTA) OF 07.03.2007

42. Indisputably, on 07.03.2007, an agreement for sale and purchase of coking coal was executed between the MMTC and Anglo. This is the Long Term Agreement (LTA). Under the

LTA, Clauses 1 and 2 are crucial for the determination of the case and they are set out hereunder:

> "CLAUSE 1: MATERIAL, QUANTITY, QUALITY AND DELIVERY PERIOD:
>
> 1.1 The SELLER shall sell and the PURCHASER shall buy,
>
> a) The base quantity during the currency of the contract shall be 466,000 (Four hundred Sixty six thousand) metric tons (of one thousand kilograms each) firm.
> b) During the First Delivery Period (1st July, 2004 to 30th June, 2005), a quantity of 464,374 (Four Hundred Sixty Four Thousand, Three Hundred and Seventy Four) metric tons (of one thousand kilograms each) firm quantity of freshly mined and washed "Isaac", "Moranbah North" and "German Creek" coking coals.
> c) During the Second Delivery Period (1st July, 2005 to 30th June, 2006) a quantity of 382,769 (Three Hundred Eighty Two Thousand, Seven Hundred and Sixty Nine) metric tons (of one thousand kilograms each) firm quantity of freshly mined and washed "Isaac", "Moranbah North" and "German Creek" coking coals.
> d) During the Third Delivery Period (1st July, 2006 to 30th June, 2007) a quantity of 466,000 (Four Hundred Sixty Six Thousand) metric tons (of one thousand kilograms each) firm quantity of freshly mined and washed "Isaac", "Moranbah North" and "German Creek" coking coals.
> e) **During the subsequent Delivery Periods, in case of the PURCHASER exercising the option to extend the duration of the Agreement by two more years, at its sole discretion, as indicated at Para 1.3 herein below, a quantity of 466,000 (Four Hundred Sixty Six Thousand) metric tons (of one thousand kilograms each)** of freshly mined and washed "Isaac", "Moranbah

North" and "German Creek" coking coals hereinafter referred to as the MATERIALS, in conformity with the Technical Specifications incorporated in Annexure- IIA (applicable for "Isaac" coking coal) and Annexure- IIB (applicable for "Moranbah North" coking coal) and Annexure IIC (applicable for "German Creek" coking coal) to this Agreement and which shall constitute an integral part of this Agreement, for use of imported coking coals in the coke ovens in its integrated iron and steel works for production of metallurgical coke. The quality of the prime washed coking coals to be supplied under this Agreement shall under no circumstances be inferior to the Technical Specifications as contained in Annexure IIA, Annexure IIB and Annexure IIC to this Agreement as applicable.

1.1.1 Annual base quantity from 15th July, 2007 to 30th June, 2009, in case Purchaser exercises its option to extend the Agreement by 2 years, shall be 466,000 metric tonnes, subject to further discussions at the time of contract extension and the logical contract specification modifications to reflect the changing nature of existing reserves at the Moranbah North and German Creek mining operations will be mutually agreed.

1.2 For the purpose of this Agreement, the Delivery Periods shall be reckoned as follows:

First Delivery Period: 1st July 2004 to 30th June 2005
Second Delivery Period: 1st July 2005 to 30th June 2006
Third Delivery Period: 1st July 2006 to 30th June 2007

The shipments will be evenly spread during each Delivery Period. The PURCHASER reserves the right to prepone shipments against any Delivery Period based on its requirement and subject to availability with the SELLER.

The PURCHASER reserves the right to postpone the deliveries to be effected under each Delivery Period by upto 3 months i.e. upto the month of September

following each Delivery Period, without any additional financial liability to the PURCHASER.

1.3 **The PURCHASER had the option to extend the duration of the Agreement by two more years, at its sole discretion and the Purchaser to exercise its option for extending the Agreement by two more years or otherwise by 31 January, 2007. In case the PURCHASER decides to exercise such option, at its sole discretion**, the Agreement shall have two more Delivery Periods as follows:
Fourth Delivery Period: 1st July 2007 to 30thJune 2008
Fifth Delivery Period: 1st July 2008 to 30thJune 2009

CLAUSE 2: PRICE:

2.1 The firm price of the MATERIALS for the First Delivery Period 1st July 2004 to 30th June, 2005 shall be US$ 57.75 (United States Dollars, Fifty Seven and Cents Seventy Five only) per metric ton (of one thousand kilograms each) Free on Board (Trimmed). Port of Loading will be Dalrymple Bay Coal Terminal, Queensland, Australia.

The firm price of the MATERIALS for the Second Delivery Period 1st July 2005 to 30th June, 2006 shall be US$ 126.75 (United States Dollars One hundred twenty six and Cents Seventy Five only) per metric ton (of one thousand kilograms each) Free on Board (Trimmed). Port of Loading will be Dalrymple Bay Coal Terminal, Queensland, Australia.

2.2 **The Price for the delivery of AGREEMENT quantity for subsequent Delivery Periods shall be fixed in accordance with Para 1 of Annexure I and shall be firm and shall not be subject to any escalation for any reason, whatsoever, until the completion of delivery of the AGREEMENT quantity due for delivery in the relevant Delivery Period with such**

extensions as might be mutually agreed upon between the PURCHASER and the SELLER.

2.3 The payment of the price of the MATERIALS delivered by the SELLER under this Agreement shall be made by the PURCHASER by means of an irrevocable, without recourse to drawer Letter of Credit providing for payment of the full invoice value of the MATERIALS at sight. The Letter of Credit will provide for full payment in US Dollars at Brisbane, Queensland, Australia. The payment shall be made on presentation of the documents mentioned in Para 6.2 of Annexure - 1.

2.3.1 Notwithstanding the method of payment as mentioned at 2.3 above, the SELLER may also provide Supplier's credit for 180 days at the terms and conditions mutually agreed upon from time to time, against an irrevocable, without recourse to drawer letter of credit upon presentation of documents mentioned at Para 6.2 of Annexure-I.

The documents in original and by fax referred to hereinabove should be delivered at the following address.

General Manager (Coal & Coke)
MMTC Limited,
SCOPE Complex, Core-1,
7, Institutional Area, Lodi Road,
New Delhi-110003
India

All bank charges at the Seller's end (outside India) shall be borne and paid for by the SELLER. All bank charges at the PURCHASER'S end (inside India) shall be borne and paid for by the PURCHASER."

(Emphasis supplied)

43. It will be noticed that under Clause 1.1 (a), the base quantity of 4,66,000 MT was fixed for the currency of the contract. For the first three delivery periods, the quantity was mentioned along with the period. Clause 1.1 (e) dealt with the option of the purchaser to extend the duration by two more years, after the third delivery period. It further provided that if option is exercised a quantity of 4,66,000 MT of coal was to be purchased.

44. Clause 1.3 vested the option in the purchaser to extend the contract. Clause 2.1 provided the firm price of the materials for subsequent delivery periods. As per Clause 2.2, the price was to be fixed in accordance with Para 1 of Annexure-I which dealt with General Conditions of Agreement. Under Para 1 of Annexure-I, the price for delivery of the materials during subsequent delivery periods was to be mutually discussed and settled by the purchaser and seller prior to the commencement of relevant delivery period at the same price as settled between the seller and SAIL/RINL, applicable to the relevant delivery period under the LTAs.

45. Clause 1.1 of the General Conditions of Agreement in Annexure-I is extracted hereunder:

> "GENERAL CONDITIONS OF AGREEMENT (GCA)
>
> PARA 1.0: PRICE FIXATION
>
> 1.1 **The price for delivery of the MATERIALS during subsequent Delivery Periods shall be mutually discussed and settled by the PURCHASER and SELLER prior to commencement of the relevant Delivery Period at the same price as settled between the SELLER AND STEEL AUTHORITY OF INDIA (SAIL) / RASHTRIYA ISPAT NIGAM LTD (RINL)**, applicable to the relevant Delivery Period under their respective Long Term Agreements."

(Emphasis supplied)

It is undisputed that the third delivery period also passed off smoothly from 01.07.2006 to 30.06.2007.

EXECUTION OF THE MoU AND EXERCISE OF OPTION: -

46. One of the questions that arise is whether option was exercised on or before 31.01.2007 as required under Clause 1.3 of the LTA. While Mr. Venkataraman-learned ASG, contends that it was Addendum No.2 dated 20.11.2008 which was the real agreement, Mr. Kaul submits that, on 30.01.2007, a MoU was executed between MMTC and Anglo. Mr. Kaul

contends that while the LTA was not formally signed, deliveries for the first and second delivery period were completed and by 30.01.2007 they were in the process of completing the third delivery period which was from 01.07.2006 to 30.06.2007. It was at this point that on 30.01.2007, a MoU has been executed with the following Clauses:

> "1. MMTC to execute the long term contract agreed between the parties in correspondence and provide to Anglo for execution earliest.
>
> 2. **The parties agree to foreclose a quantity of**
>
> a) 1615 MT undelivered against first delivery period July 2004- June 2005 of long term contract @ USD 57.75 PMT FOBT and
>
> b) 83231 MT undelivered against second delivery period July 2005-June 2006 of long term contract @ USD 126.75 PMT FOBT
>
> 2. Supply of a quantity of 466,000 MT @ USD 114.00 PMT FOBT for third delivery period July 2006-June 2007. The delivery period is extended to September 30,2007.
>
> 3. **Supply of a quantity 466,000 MT at price to be finalized by EJC for SAIL and RINL, for fourth delivery period July 2007- June 2008**. The delivery period is extendable up to September 2008.
>
> 4. **The contract is extended by a further two years in accordance with clause 1.3 of the long term agreement.**

Fourth delivery period 1st July 2007 to 30th June 2008.

Fifth delivery period 1st July 2008 to 30th June 2009.

The price terms & Conditions of coal supply to MMTC for fourth and fifth delivery periods shall be as per Anglo-Agreement UNL/SAIL"

(Emphasis supplied)

47. It will be noticed that this MoU was signed on 30.01.2007 and this is a fact not disputed by the learned ASG and, in fact, filed by the learned ASG as part of his additional documents. This date was one day before the deadline of 31.01.2007.

DELIVERIES DID NOT AWAIT FORMAL EXECUTION OF AGREEMENTS: -

48. As is clear from the MoU, based on the agreement in the correspondence, deliveries were taking place and by the time the LTA was signed, it was mid-way during the third delivery period. As could be seen from the MoU, even the 4th delivery period was agreed upon and passed on without any dispute. The 5th delivery period was to begin on 01.07.2008, when the 4th delivery period stood extended till 30.09.2008.

PRICES PEGGED TO SAIL/RINL PRICE: -

49. The price for the periods concerned was pegged by what the Empowered Joint Committee would fix for the contract with SAIL and RINL. This was also reiterated on 30.01.2007, contends Mr. Kaul. When matters stood thus, the time for the 4th delivery period which was extended to 30.09.2008, however, continued till 30.10.2008. In the meantime, as is clear from the internal note of 03.06.2008 circulated by Shri Suresh Babu of MMTC, SAIL and RINL had fixed their price for the delivery period from 01.07.2008 to 30.06.2009. On 03.06.2008, the Lehman Brothers' collapse had not happened. It commenced on 15.09.2008, and that is also not in dispute.

INTERNAL NOTE OF 03.06.2008

50. At this stage, it is relevant to extract the internal note of 03.06.2008 prepared by Shri Suresh Babu for MMTC, which reads as under:-

> "COAL & HYDROCARBON DIVISION
>
> **Sub: Finalization of long term price of Coking Coal for Delivery Period of 01-07-2008 to 30-06-2009.**

Anglo and BMA had already finalized the price of hard coking coal for the above delivery period with Japanese Steel Mills and SAIL and RINL. The price of prime hard coking coal for the above delivery period is fixed at usd 300/t and Torrington hard coking coal at usd 292.50/ t as against usd 96.4/91.5 per ton respectively in the previous year. It is understood that BMA had not allowed carrying forward the left over quantities for the delivery period 2007-08 in case of Japanese Steel Mills. So MMTC made all out effort to secure the cargo from both BMA and Anglo within the delivery period itself. MMTC will not be able to lift the entire contracted quantity of Anglo Coal for 07-08 by 30th June, 2008. Accordingly shipment schedule has been obtained from Anglo to complete shipment within the extension allowed i.e., upto Sept,'08. However, BMA has to give us the schedule for left over quantity for 2007-08. Here also every effort is being made to ensure that the entire quantity relating to 2007-08 delivery period will be secured within the extended delivery period upto 30th Sept., 2008.

The coal supplied within the extended period will be sufficient to take care of NINL requirement upto March'09. As per the shipment schedule given by Anglo, two vessels have to be nominated in Sept 08 to load coking coal from DBCT. These vessels will come up for loading from DBCT in Oct 08 and reach Paradip early November 08.

Both Anglo and BMA are offering Japanese price to Indian consumers. The demurrage rate offered by Japanese Steel Mills are said to be in the range of US $ 9000-15,000 per day. So Indian consumers also have been asked to accept similar demurrage rates. **Despite all these, the spot price of hard coking coal has reached US $ 400/t FOB; availability is very-very tight. Since the 2007-08 contract cargo is to be delivered upto 30.9.09, there was a suggestion from Anglo that quantity for 1.7.08 to 30.6.09 will be**

proportionately reduced keeping in mind 9 months left for the supplies.

Considering the huge shortage for coking coal and the spot premium, it is felt that "we may continue to keep the delivery period from 1.7.08 to 30.06.09 and the contracted quantity will be 4,66,000 tons with provision for extension of delivery period by another three months, i.e., upto 30.9.09. in case the entire quantity cannot be delivered by 30 June 2009, delivery period will be extended upto 30.9.09." We may also request Anglo to extend the long term agreement for another five years with the terms and conditions of Steel Authority of India Ltd.

For approval 'A' please

Sd/-
(SURESH BABU)
03.06.08

DIR (HSM)

Upto March 09, we should try to avoid/ defer US$ 300 price coal to be finalised for 08-09 pl. 'X' app.

Sd/-
HS Mann
04/08."

(Emphasis added)

51. As will be noticed, there was a note of Shri H.S. Mann, Director, to the effect that MMTC should try to avoid/defer US$ 300 price coal to be finalised for 08-09. Learned ASG highlighted this aspect of the matter in great detail. The

learned ASG contended that even Mr. Mann, later was a party consenting to the price of US$ 300 PMT and wanted to infer certain sinister conduct in the same.

EJC – APPROVAL OF SAIL/RINL PRICE AT US$ 300 PMT:

52. On 14.08.2008, Anglo wrote to MMTC about their agreement with the Empowered Joint Committee (EJC) on 08th and 9th May, 2008 for supply of hard coking coal to SAIL and RINL during the delivery period from 01.07.2008 to 30.06.2009. They confirmed by the same mail the supply arrangement for the 5th delivery period with MMTC for 4,66,000 MT. Indisputably, the price fixed with SAIL and RINL was US$ 300 PMT.

53. On 25.09.2008, a letter was written by Shri Suresh Babu of MMTC to Shri SP Padhi, Executive Director of NINL, suggesting that since SAIL has already signed the agreement for 2008-2009 and the price is also fixed, MMTC may also sign the agreement. In the letter, it was suggested that a new brand of hard coking coal "Dawson Valley Blend" has been introduced. The letter suggested that "Dawson" coal be

preferred because "Dawson" coal will be loaded from Gladstone where the pre-berthing delay is only around a week as against 25 to 30 days in port (DBC) where Isaac coking coal was loaded. Suggestion was that demurrage can be saved by MMTC.

AGENDA NOTE OF 29.09.2008

54. In the agenda note dated 29.09.2008 put up by Shri Suresh Babu to the **Sale/Purchase Committee of Directors [SPCoD]** of MMTC, it was stated as under:-

> "**5. Status Of 2007-08 Contract**:
> **a) Contracted Quantity**: 466,000 Mt: As on today a quantity of 417,345 MTs of Hard Coking Coal has already been loaded by Anglo and a vessel is already nominated in lay can 20-30 October 2008, for loading about 50,000 Mt.
>
> **6. New 5 Year Long Term Agreement by SAIL**: RINL/SAIL's LT agreement was valid till 30.6.08. They have entered into a new five year long term agreement with Anglo Coal for the period of 15th July 2008 to 30th June 2013. Our LT agreement is valid upto 30.6.09. We may, if approved, explore the possibility and enter into a five year long term agreement with effect from 01.07.2008 to 30.06.2013 as in the case of RINL/SAIL.
>
> **B: RECOMMENDATION OF THE DIVISION: -**
> 7. SPC may please deliberate and accord approval for:-

i) Inclusion of new coking coal brand "Dawson Valley Blend".

ii) Price of US$ 300.00 PMT FOB each for the purchase of Isaac and Dawson Valley Blend Brand of Coking Coal totaling 466,000 MT from Anglo for the period of 1st July 2008 to 30th June 2009.

iii) Subject to acceptance by Anglo Coal for entering into five years long term agreement with them w.e.f. 1.07.2008, incorporating the terms and conditions of Anglo's Agreement/ amendment to Agreement with SAIL from time to time with logical changes wherever applicable.

8. The total value of the proposed purchase for 2008-09 is about Rs.615 crores (exchange rate US$/Rs. = 1/44).

9. Authorising Dir (HSM) and Dir (Fin) to sort out deadlock issues/make logical changes wherever required.

10. Associate Finance has concurred the proposal.

11. Director-HSM has seen and approved for circulation to SPCOD.

C: DECLARATION

The Division has truly and fairly brought out all material information available with the division which is likely to influence the decision SPC, in the agenda and no material information has been withheld."

SPCoD APPROVAL OF 06.10.2008

55. The SPCoD met on 06.10.2008. The SPCoD (including Mr. H.S. Mann) granted approval in the following terms:-

"Item No. 1: Agreement with Anglo coal Australia Pty. Ltd., for import of Coking Coal for NINL-as per note of GM (SB) dated 29.9.2008

The Committee after being informed that the proposed terms and conditions including deviations are same, as in the case of RINL/SAIL approved the proposal subject to acceptance of the same by NINL. **Possibility of reduction of quantity for 2008-09 be explored without affecting long-term prospects from the supplier in view of recent fall in prices** of Pig Iron and Steel products

Item No. 2: Import of Coking Coal of NINL-Qty. & Price Fixation as per note of GM (SB) dated 29.9.2008

The Committee after being informed that the proposed terms and conditions including deviations are same, as in the case of RINL/SAIL, approved **the proposal subject to acceptance of the same by NINL**. Possibility of reduction of quantity for 2008-09 be explored without affecting long-term prospects from the supplier in view of recent fall in prices of Pig Iron and Steel products."

(Emphasis supplied)

The Minutes of 06.10.2008 mentioned that in view of the recent fall in prices of pig iron and steel products possibility of reduction of quantity should be explored.

56. Dealing with reference to "approval by NINL" in the Minutes, Mr. Kaul sought to explain the same by stating that the LTA was not dependent on the approval of NINL and what

was meant by the Minutes was the approval of the proposed change in the technical specifications of coal.

5TH DELIVERY PERIOD COMMENCED WITH THE LAST SHIPMENT UNDER THE FOURTH DELIVERY PERIOD: -

57. During this period, the 4th delivery period was nearing completion in view of the extension up to 30.09.2008 which prolonged up to 30.10.2008. In fact, it was not disputed that with the last shipment of the 4th delivery period of 48,655 MT at US$ 96.40 PMT, 2,366 MT was loaded on the vessel as part of the 5th delivery period at US$ 300 PMT. This was even before the Addendum No.2 of 20.11.2008 and on a query by the Court, the learned ASG replied that this was a miniscule quantity intended to save dead freight. What is, however, significant is even before agreements were entered into, based on the agreement on correspondence, deliveries were being executed and that is clear from the events that transpired from 2004 onwards. No grievance has been raised for any of the shipments till 20.11.2008.

REPLY OF NINL TO MMTC LETTERS OF 25.09.2008: -

58. In reply, NINL wrote two letters, first a letter was written on 14.10.2008 giving a go-ahead. Thereafter, a letter dated 16.10.2008 was written in reply to MMTC's letter dated 25.09.2008. This letter of 16.10.2008 is strongly relied upon by learned ASG to contend that NINL needed only 2.2 Lakh tons of Anglo coal. The letters dated 14.10.2008 and 16.10.2008 read as under:-

> "Ref.No.NINL/GM(Comml)/2008/1085
>
> Date: 14.10.2008
>
> Mr. Suresh Babu,
> GM (Coal & Coke)
> MMTC Ltd.,
> New Delhi
>
> Dear Sir,
> Please refer to your mail dated 25th September, 2008 for procurement of coking coal of 12.66 lakh tons.
>
> MMTC may please place order for Anglo Coal consisting of 80% Dawson and 20% Capricon, since the same is approved by SAIL. Other terms and conditions may be negotiated and finalized.
>
> Thanking you,
> Yours faithfully
>
> For Neelanchal Ispat Nigam Ltd
> Sd/-

[P.K. Pandey]
DGM (Commercial)

*** *** ***

Ref. No. NINL/CM/24/1103 Dt. 16th October, 2008

Mr. Suresh Babu,
General Manager (Coal & Coke)
MMTC Limited
Core-1, Scope Complex
7 Institutional Area, Lodhi Road
New Delhi-110003

Dear Sir,

Please refer to your mail dated 25th September, 2008 for procurement of Coking Coal of 12.66 Lakh Tons.

It may be noted that our annual requirement is 11.80 lakh tons. Our present stock of coal is around 3.70 Lakh tons. Hence, we need to procure coal around 9.00 Lakh tons in a year from now. However, procurement quantity may be decided based on the coal supply in pipe line and our present stock. Considering, blending of the hard coal and soft coal is in 80:20 ratio, coal may be procured as under:

Hard Coking Coal:
a) BMA : 5 Lakh tons approx.
b) ANGLO : 2.2 Lakh tons approx.

Out of 2.2 Lakh tons of ANGLO Coal, 20% may be procured from Dawson Valley Blend consisting of 80% Dawson and 20% Capricorn, since the same is approved by SAIL, at the option of MMTC/NINL (to be exercised in a manner for minimizing the demurrage)

Soft Coking Coal

Black Water: 1.80 Lakh Tons Approx.

Price, terms and conditions may be negotiated and finalized.

Thanking you,

Yours faithfully,

Sd/-
16/10
(P.K. Pandey)
Dy. General Manager (Commercial)

Encl: Approved copy of Competent Authority for your reference and record."

59. Mr. Kaul contends that the terms of LTA had already fixed the quantity and NINL's correspondence one way or the other can have no bearing on the committed quantity which MMTC agreed to procure from Anglo.

ADDENDUM NO.2 DATED 20.11.2008 – THE BONE OF CONTENTION: -

60. It is in this background that the 20.11.2008-Addendum No.2 to the LTA was formally signed. Learned ASG contended that it was by the agreement of 20.11.2008 that price and other

terms of delivery were fixed and relied on the evidence of Mr. John Wilcox who was examined in the Arbitration as Anglo's witness. According to learned ASG, the officials of MMTC by entering into Addendum No.2 tied up MMTC in knots and no ends were kept loose to ensure that MMTC was committed to huge financial amounts due to the fraudulent fixation of the price.

61. Learned ASG referred to the news release of Anglo dated 20.02.2009 to demonstrate that it was within the knowledge of Anglo that the price of coking coal has drastically fallen in the second half of 2008.

62. In response, Mr. Kaul contended that Addendum No.2 signed on 20.11.2008 was only the last in the series of documents to finetune the shipping terms, moisture content and the specific variety of coal for the 5th delivery period all material terms including the shipping period (from 01.07.2008 to 30.09.2009) quantity (4,66,000 MT) and price were already fixed in terms of the LTA. The price was to follow the

SAIL/RINL price which has been duly fixed at US$ 300 PMT for the said period.

63. The Addendum of 20.11.2008 is in the form of a letter addressed by MMTC to Anglo. It is to the attention of Mr. John B. Wilcox. It states that MMTC was pleased to confirm the settlement with Anglo and, thereafter, the column below deals with (i) delivery period – 01.07.2008 to 30.06.2009, (ii) quantity – 4,66,000 MT. Thereafter, it deals with coal brands and price (US$ 300 PMT), other terms like total moisture, loading terms, vessel sizes, loading rates, demurrage rates for different ports, the variation permissible limits and force majeure clause. At the end it has the following clause:

> "All other terms and conditions of agreement no. MMTC/C&HC/LT/HCC/NINL/ANGLO/585 DATED 7TH MARCH 2007 shall remain unchanged".

64. It should be recalled that shipments have happened based on correspondence, as stated earlier from 2004 and agreements have been entered into post the shipments even for the 5th delivery period. Admittedly, 2,366 MT were

shipped on 30.10.2008 along with the last shipment of the 4th delivery period.

SAME DAY (20.11.2008) LETTER SEEKING PRICE REDUCTION: -

65. On the same day after entering into Addendum No.2, the following letter was written by Mr. Ved Prakash, the Chief General Manager of MMTC to Anglo:-

"File No. MMTC/C&HC/08-09/CC/Anglo/798

20th November 2008

Anglo Coal Australia Pty. Ltd.
201, Charlotte Street
Brisbane 4000
Queensland, Australia

Fax No. 0061-7-3834-1390

KIND ATTN: MR. JOHN B WILCOX, MARKETING MANAGER

Sub: Addendum to Long Term supply of coking coal contract for the
Delivery Period 2008-09

Dear Sirs,

As discussed, we hereby confirm the acceptance of coking coal supply during the period 2008-09 vide Addendum No.2 LT Agreement MMTC/C&HC/LT/HCC/NINL/ANGLO/585 DATED 7th March 2007

As you are aware, due to worldwide crisis as financial markets, there has been unprecedented fall in prices of major commodities including steel Such a steep tall is a rare phenomenon and all over there is a feeling that it is a beginning of economic recession in the world. It is feared that it may continue for long time to come

The prices of iron and steel products in the international market has nose-dived in the month of September and October 2008 and pig iron, a finished product manufactured by us and being exported is not getting customer on date even at US $100 FOB. Same is the situation in the domestic market and we are not able to sell our product. **Under the circumstances, you will appreciate it has become absolutely unviable to produce and sell pig iron based on the imported coking coal having price of US$ 300 per tonne FOB for hard coking coal. More than three-fold increase in the price of coking coal during a period when the prices of finished steel including pig iron had virtually crashed, will make difficult for us to run the plant on sustainable basis. The substantial depreciation of Indian rupees to USD has further added to our woes and under the circumstances**, we have already out the production to a bare minimum so as to just keep running our coke oven batteries as well as blast furnace. In view of unprecedented recessionary trends in the economy and consequent abnormal low realization on pig iron, we request price reduction of coal for quantities finalized for delivery during 1st July 2008 to 30th June 2009 period to level that was settled for delivery period 1st July 2007 to 30th June 2008. This only will help us to keep the plant running and to produce on consistent basis.

We look forward for your positive response.

Yours faithfully

Sd/-
MMTC Ltd.
Ved Prakash
Chief General Manager"

(Emphasis supplied)

66. The letter was written by Shri Ved Prakash who was then the Chief General Manager and the substance of the letter was that since pig iron prices have crashed, to purchase coal at US$ 300 PMT to produce pig iron could be an unviable option. Hence, a request was made for price reduction of coal for the period from 01.07.2008 to 30.06.2009 to the level which obtained for the delivery period from 01.07.2007 to 30.06.2008.

67. Elaborate arguments were advanced by the learned ASG about the significance of letter being written on the same day after signing the Addendum No.2. The learned ASG also invited our attention to the observations of majority members of the Board of Arbitration about the Addendum being executed and the letter being written on the same day respectively.

SUBSEQUENT CORRESPONDENCE – CONCEPT OF "CARRY OVER": -

68. Learned ASG referred to a series of correspondence that ensued between MMTC and Anglo pursuant to MMTC lifting only 11,966 MT out of the contracted 4,66,000 MT. Learned ASG contended that the correspondence only reflected a friendly fight between erring officials, after having committed to the price of US$ 300 PMT while the prevailing market price was US$ 128 PMT. Learned ASG submitted that on the one hand Anglo was justifying the fixation of prices at US$ 300 PMT on the premise that agreements entered into between SAIL and RINL were of the said price, while on the other hand Anglo chose to ignore the same analogy for the period post the execution of Addendum. According to learned ASG, the refusal on the part of Anglo for staggering at the price of US$ 128 PMT in the same manner as was provided to SAIL was an act of arbitrariness on the part of Anglo. Learned ASG lamented that the erring officials of MMTC did not even attempt to persuade Anglo to provide the same treatment as

was given to SAIL and RINL after the execution of the Addendum dated 20.11.2008.

69. Learned ASG referred to the letter dated 21.09.2009 of Anglo which referred to the earlier letter dated 09.03.2009 (which MMTC claims was not received by MMTC) and submitted that Anglo had made the following proposal:-

- MMTC to perform a total of 38% of the total contracted tonnage for the Fifth Delivery Period on the terms and conditions (including price) applicable under the Agreement (a further 172,533 tonnes) by March 31, 2010. This will bring MMTC in line with the contract performance of SAIL and RINL for the 2008/09 Delivery Period.
- In addition, MMTC is to perform 18.7% of the remaining Carryover (a further 52,641 tons) by March 31, 2010 on the terms and conditions of the Agreement (including price) as agreed with SAIL and RINL.
- Anglo will enter into a new long term agreement with MMTC on the same terms and conditions as the current long term agreements with SAIL and RINL (including performance of the remaining carryover) for 466,000 tonnes per annum for a period of 3 years commencing 1st April, 2010.
- Therefore, in summary, MMTC will take delivery of 225,174 tonnes of coal at 2008 price, terms and conditions between now and 31 March 2010 and, under the new 3 year contract, perform the remainder of the Carryover evenly spread over the first 2 years of the contract.

- This proposal is made without prejudice to our rights under the Agreement. It will remain open and capable of acceptance until 5:00 pm (Brisbane time) on Wednesday 30th Sept 2009.

70. Learned ASG submitted that by letter of 25.09.2009, Shri Suresh Babu declined the proposal which the learned ASG stated would indicate that the reply strengthened the case of Anglo. Referring to the counter proposal in the letter of 25.09.2009, the learned ASG referred to the following paragraph in the said letter:-

> "...Keeping these issues in mind, we had approached Anglo Coal for a reduction in price vide our letter dated 20.11.2008. Lifting another 38% implies a further increase in loss by another USD 80/t. **For the sake of negotiation, we hope you will not ignore the economic realities completely. Steel Melting Shop of NINL is under implementation and the commissioning is expected sometime in end 2010. Economy will also come out of recession gradually.**
>
> **In short we are not denying our obligation**. The request is only for staggering the time frame for lifting as explained in para 1 and para 2. Please review and consider our request for allotting at least one shipment of 50,000 MT each from October 09 onwards instead of zero stem till end of 2009."
>
> (Emphasis supplied)

71. Learned ASG also referred to the further proposal of Anglo vide their letter dated 25.11.2009, whereby Anglo proposed that MMTC lifts the remaining quantities of 4,54,034 MT of 2008 contract year in line with the agreement with SAIL and RINL at the 2008 price of US$ 300 as per the following schedule:-

"January - March, 2010	85,000	18.7%
April 2010 - March 2011	1,84,566	40.65%
April 2011 - March 2012	1,84,566	40.65%

We trust that this arrangement meets with your approval.

This proposal is made without prejudice to our rights under the Agreement. It will remain open and capable of acceptance until 5.00pm (Brisbane time) on Friday 4th December 2009."

72. Learned ASG referred to the reply of Shri Suresh Babu, for MMTC dated 27.11.2009 in his letter addressed to Mr. Rod H. Elliott of Anglo stating that the said proposal was acceptable to MMTC subject to Anglo allocating the left-over quantities pertaining to 2009 contract at 2009 prices based on

the terms and conditions agreed upon in the EJC of SAIL and RINL. The learned ASG referred to the following para in the said letter.

> "……conditions agreed upon in the EJC of SAIL & RINL. To be specific the balance supplies amounting to 4,25,600 MT at the 2009 price level of US$ 128/125 PMT shall also be made in proportion along with the carryover quantities of 2008 as proposed above in line with the terms agreed upon with SAIL & RINL."

73. Learned ASG referred to the reply of Anglo dated 01.12.2009 stating that it was not possible to make any additional tonnage commitment to MMTC over and above what was detailed in the proposal of 25.11.2009. The above correspondence was characterised by the learned ASG as a make believe and friendly fight and only a creation of a paper trail to give an impression that there was no collusion.

74. Mr. Kaul, on the other hand, submitted that the offers made by Anglo were good faith offers. Explaining the concept of "carry over" learned senior counsel, Mr. Kaul, pointed out that "carry over" arrangements do not dilute price or quantity

and all that happens is some more time is given to the purchaser to lift the quantities at the contracted price.

75. Mr. Kaul strongly refuted the contention that Anglo allowed SAIL and RINL to lift their 2008-09 quantities at a reduced price. Mr. Kaul submitted that SAIL and RINL were in the first delivery period of their new LTA and as such could lift coal pertaining to their future delivery period alongside their 2008-09 carryover and could thus seek mixed price cargo with shipments containing some percentage of 2008-09 carryover and some percentage of the ongoing delivery period. Mr. Kaul submitted that MMTC was in the last delivery period and even then they were not treated differently than SAIL or RINL.

76. According to Mr. Kaul, on 15.07.2009, MMTC was offered an ad hoc "mixed price shipment" to tide over financial difficulties of MMTC. According to the learned senior counsel, what was offered in the letter, namely, 40,400 MT at US$ 128.25 PMT was on ad hoc basis with a condition that their carry over quantity of 5th delivery period will be supplied only at US$ 300 PMT.

77. Mr. Kaul, learned senior counsel for Anglo submitted that the letter of 21.09.2009 by Anglo offered the same "carry over terms" to MMTC as was offered to SAIL/RINL, as is clear from the letter itself. According to Mr. Kaul, the attempt of MMTC by its letter of 21.05.2009 was to perform the carry-over obligation at the adhoc mixed price, which was offered vide letter of 15.07.2009 as a onetime measure and as a goodwill gesture.

78. Mr. Kaul submitted that by letter of 21.09.2009, Anglo even agreed that MMTC could spread out its contractual performance over the next 3 years. The letter of MMTC of 27.11.2009, according to Mr. Kaul, purported to accept this offer provided, in parallel, Anglo also supplied additional (Adhoc) (coal) @ US$ 128/125 PMT. This could not be accommodated by Anglo resulting in the invocation of arbitration ultimately.

79. According to Mr. Kaul, MMTC kept asking for reduction of price and when Anglo refused to supply at the reduced price a defence was taken in the arbitration and in the Court

proceedings that Anglo was incapable of supplying. According to Mr. Kaul, this submission was rejected both by the majority of the arbitral Tribunal and by the learned Single-Judge in Section 34 which was restored by this Court and a finding was recorded that the stand of MMTC that Anglo was incapable of supplying was found to be incorrect.

80. Mr. Kaul invited our attention to the following findings of this Court to buttress his submission.

> "…….However, what is missed by Shri Rohatgi is the crucial fact that no price for the coal to be lifted was stated in any of the emails or letters exchanged during this period. This is in fact what the Majority Award adverts to and fills up by having recourse to the evidence given by Mr. Wilcox, stating that the ambiguity qua price was resolved by the fact that no coal was available for lifting at a price lower than the contractual price. The Majority Award found, relying upon Mr. Wilcox's evidence, that the supplies that were sought to be made in August and September, 2009 were therefore, also in the nature of "mixed" supplies, i.e., coal at the contractual price, as well as coal at a much lower price. This is a finding of fact that cannot be characterised as perverse, as it is clear from the evidence led, the factual matrix of the setting of there being a slump in the market, in which the performance of the contract took place, as well as the ambiguity as to whether the correspondence referred to contractual price or "mixed" price, and thus, is a possible view to take."

MMTC'S CONTRACT WITH BMA – SAME PERIOD / SAME PRICE (APPROXIMATELY): -

81. Dealing with the aspect of the contracted price, namely, US$ 300 PMT, Mr. Kaul highlighted the fact that MMTC had a parallel contract with BHP Billiton Mitsubishi Alliance (BMA). Under the said contract, MMTC lifted five lakh tons of hard coking coal at US$ 300 PMT (Goonyella Middle Seam brand) and US$ 292.5 PMT (Torrington brand) and US$ 270 PMT (soft coking coal) and absolutely no grievance was made about the said contract with BMA. Quantities were lifted and price paid without demur, contends Mr. Kaul. Mr. Kaul further submitted that in fact the price paid to BMA was used as a defence when Anglo sought damages pointing to market price at US$ 126 PMT. The argument of MMTC before the arbitrators was that there was no scope for damages as the market price was what they had paid to BMA.

82. In response to the aspect of supply by BMA, learned ASG submitted that the said transaction was vastly different from the one entered with MMTC. The learned ASG submitted that

a. The agreement entertained between BMA and MMTC was qua 5,00,000 MT hard coking coal and 3,00,000 black water soft coking coal whereas Addendum 2 with Anglo by MMTC was only qua 4,66,000 hard coking coal.

b. BMA showed flexibility, commercial wisdom and prudence by providing coking coal at the rate agreed that is US$ 292.50 for Torrington brand coking coal and US$ 270 Black water soft coking coal in a staggered manner which commenced from 25.05.2009 till 23.06.2012.

c. BMA continued to supply the much needed hard coking coal to the tune of 3,21,410 MT for operating the NINL plan at the prevailing market rate that is US$ 122 PMT whereas Anglo adopted an extremely hard and uncompromising stand and refused to supply coking coal, except for one adhoc quantity of 40,446 MT of coking coal at US$ 128.25 PMT on 05.08.2009.

d. The quality of coking coal supplied by BMA was different from the one supplied by Anglo.

LONG CONTINUANCE OF MR. VED PRAKASH: -

83. Dealing with the contention of the learned ASG that Mr. Ved Prakash, being at the helm of affairs in different senior positions from 2008 to 2020, Mr. Kaul submitted that the arbitration proceedings and the Court proceedings were hotly contested and that at no point was the issue of fraud and collusion and breach of fiduciary duty in the making of the contract ever raised. Mr. Kaul pointed out that Mr. Ved Prakash retired on 29.02.2020 when judgment was reserved in the Section 37-Appeal of MMTC. The judgment was pronounced on 02.03.2020 in favour of MMTC and cited this to rebut the contention that Mr. Ved Prakash and team played a friendly match. Mr. Kaul further submitted that Anglo carried the matter further to this Court and by a detailed judgement this Court upheld the award and restored the findings of the learned Single Judge.

84. Mr. Kaul invited our attention to the following findings of this Court in judgment dated 17.12.2020.

‘‘3. "Under clause 2 of the LTA, which refers to "Price", for subsequent Delivery Periods, including the "Fifth Delivery Period", with which we are directly concerned, it is undisputed that when read with Annexure I of the LTA and a letter dated 14.08.2008, setting out the terms of the Fifth Delivery Period, the price fixed at $300 per metric tonne .... "

10. "Shri Kapil Sibal, learned Senior Advocate appearing on behalf of the Appellant, painstakingly took us through the LTA and the entire correspondence that ensued between the parties. He argued that all the findings given by the Majority Award were findings of fact, there having been little dispute on the construction of any term of the LTA; no dispute as to the contracted quantity of coal that was to be supplied in the Fifth Delivery Period, i.e. 466,000 metric tonnes: no dispute as to the price at which such coal was to be supplied, i.e., at the rate of $300 per metric tonne; and no dispute as to the quantity of coal that remained unlifted, i.e., 454,034 metric tonnes. The only issue before the Arbitral Tribunal was whether the Appellant was unable to supply the contracted quantity of coal at the contractual price, or whether the Respondent was unwilling to lift the quantity of coal at the contractual price, both being purely questions of fact as to the performance of contractual obligations stemming from the LTA."

14. "Shri Mukul Rohatgi, learned Senior Advocate appearing on behalf of the Respondent, supported the impugned judgment of the Division Bench ... According to him... the Respondent was in a position to take supplies, and did in fact demand that supplies of coal be made in accordance with the LTA."

17. "The first and most important point, therefore, to be noted is that this is a case in which there is a finding of fact by the Majority Award that the Appellant was able to supply the contracted quantity of coal for the Fifth Delivery Period, at the contractual price, and that it was the Respondent who was unwilling to lift the coal, owing to a slump in the market, the Respondent being conscious of the fact that mere commercial difficulty in performing a

> contract would not amount to frustration of the contract. It was for this reason that the Respondent decided, as an afterthought, in reply to the Appellant's legal notice dated 04.03.2010, to attack the Appellant on the ground that it was the Appellant that was unable to supply the contracted quantity in the Fifth Delivery Period."

IMPACT OF THE FIRST INFORMATION REPORT: -

85. Mr. N. Venkataraman, learned ASG, drew attention to the complaints filed by MMTC which resulted in the registration of the First Information Report on 21.07.2025. The FIR is registered for offences under Section 120(B), IPC, and Sections 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 [PC Act]. The FIR is lodged by Shri Abhay Kumar, General Manager, MMTC, New Delhi. The FIR records that the information prima facie disclosed commission of offences punishable under the Sections referred to above. The FIR is registered against 13 named officials of MMTC, against the Anglo, against unknown officials of MMTC and Anglo and other unknown persons.

86. FIR refers to the background of the Long Term Agreement (LTA) dated 07.03.2007 details about the 5th delivery period; the quantity agreed to be procured and the price of US$ 300 PMT, labeled as massively inflated. The FIR makes reference to

Addendum 2 dated 20.11.2008 having been entered into ignoring NINL letter of 16.10.2008 and attributes collusion between MMTC and Anglo officials for execution of Addendum 2 at a peak price when the Lehman Brothers collapse happened in September 2008.

87. The FIR further mentions that the SPCoD approved Addendum 2, based on misleading inputs from Mr. Ved Prakash and Suresh Babu who failed to disclose the reduced demand and obtained approval under false pretences amounting to administrative frauds. A reference is also made to the letter of the same dated 20.11.2008 seeking reduction of price. FIR refers in detail to the subsequent correspondence which, according to the complaint, discloses that officials did not assert the legal position of MMTC against Anglo. A particular reference is made to the use of phrase "*we are not denying our obligation*" in the letter of 25.09.2009 which, according to the complaint, weakened the MMTC's defense in arbitration.

88. The FIR refers to an allegation about Anglo providing reduced price US$ 128 PMT and staggered deliveries to SAIL and RINL but refusal of the same to MMTC/NINL. It alleges that MMTC officials failed to invoke parity or renegotiation clauses, indicating

deliberate inaction. It was stated in the FIR that all this suggested that there was exchange of unlawful and illegal consideration between the erring officials of MMTC and Anglo.

89. As will be noticed above, the gravamen of the allegations in the FIR is similar to the allegations set out in the proceedings before us which we have discussed in detail hereinabove.

90. Alluding to the First Information Report, Mr. Kaul submitted that the whole attempt to file a criminal complaint and get the FIR registered is a malicious attempt to wriggle out of the award and mere pendency of the FIR could not render the award inexecutable. Mr. Kaul submitted that MMTC filed a criminal complaint with the CBI on 02.09.2022 with the follow-up complaint on 23.11.2022. The CBI registered the preliminary enquiry on 09.01.2023. MMTC moved the CBI Court seeking a direction to register the FIR. The CBI Court passed a judgment on 09.05.2024 stating that it did not have power to direct the CBI to register the FIR. On 01.03.2025, MMTC filed a Revision Petition against CBI Court's order before the High Court. In the meantime, the Executing

Court allowed the Enforcement Petition and dismissed the MMTC's objections on 09.05.2025 which is the order impugned herein.

91. During the pendency of this Special Leave Petition, and when arguments have been heard on 22.05.2025 and 23.05.2025 and when the matter was posted after the partial working days i.e., for 24.07.2025, on 20.07.20205 MMTC filed the follow-up complaint with the CBI and the CBI, very promptly, registered the FIR on 21.07.2025. Mr. Kaul submitted that all this was done when the matter was part-heard only to create some support to the allegations of fraud. Mr. Kaul made a grievance that no leave of the Court was taken and that MMTC had resorted to abuse of the legal process of the Court. Mr. Kaul submits that execution of the award cannot be kept in abeyance pending an FIR based on a self-serving and convenient criminal complaint.

92. The FIR has been filed for the offences punishable under Section 120B, IPC, read with Section 13(2) and 13(1)(d) of the PC Act, against named public servants of MMTC the

respondent company, unknown officials of MMTC and the respondent.

93. Mr. Kaul, learned Senior Counsel, submitted that had there been criminal conspiracy/fraud, the common course of human conduct of recalcitrant parties would be to lift the coal at the agreed price, pay the amount, and share the booty. Instead, here was a case where not only was the contracted quantity not lifted except to the extent of 11,966 MT, leaving a huge amount of contracted quantity un-lifted, Anglo had to litigate for the last 15 years and have still not seen the fruits of the award. To say that there was collusion, submits Mr. Kaul, would be completely unjustified.

ANALYSIS

94. We have set out hereinabove the contentions of both the parties to enable us to examine the issue whether at least *prima facie* the case of breach of fiduciary duty has been established by MMTC in this appeal. From the analysis of the

pros and cons of the case advanced by both the parties, the following undisputed facts/irresistible deductions emerge:-

a. That there was a Long Term Agreement (LTA) between the parties on 07.03.2007 which for the first three delivery periods clearly prescribed the quantity of 4,66,000 MT as the yearly base quantity of which 4,64,374 MT was fixed for the first delivery period, 3,82,769 MT was fixed for the 2nd delivery and 4,66,000 was fixed for 3rd delivery period.

b. In clause 2 of the LTA, the price for the 1st and 2nd delivery period was prescribed. For the subsequent delivery period, the price was fixed in accordance with para 1 of the General Conditions of the Agreement (GCA). Para 1.1 of GCA prescribed that the price was to be mutually discussed and settled at the same price as settled between Anglo and SAIL/RINL.

c. Under clause 1.3 of the LTA, the option to extend the duration of the agreement was to be exercised by 31.01.2007. It has not been disputed before us that a MoU dated 30.01.2007 was executed between MMTC and Anglo. Under the MoU read with Clause 1.3 of LTA, supply of a quantity of 4,66,000 MT at a price to be finalized by the Empowered Joint Committee for SAIL/RINL was agreed upon. The contract was

extended further for 2 years, covering the 4th and 5th delivery period.

d. MoU also indicates that based on correspondence and even before the execution of the Long Term Agreement, the first, 2nd and part of the 3rd delivery period was even completed. So parties had, based on correspondence, discharged their obligations.

e. It is not disputed that the 4 delivery periods namely the first, second, third and fourth passed on peacefully with no dispute between the parties.

f. The 5th delivery period was to begin on 01.07.2008. However, the 4th delivery period under the 3 month extension clause stood extended till 30.09.2008 and in fact was further extended for a month to 30.10.2008.

g. It is also not disputed that the Empowered Joint Committee on 8th and 9th May 2008, did approve a price of US$ 300 PMT for supply for coal to SAIL/RINL. This is important because the price fixed for SAIL/RINL is linked to the price that MMTC was to pay.

h. It is also not disputed that with the last shipment of the 4th delivery period, 2366 MT pertaining to the 5th delivery period was also shipped on 30.10.2010.

i. The EJC, fixed the price for the 5th delivery period on 8th and 9th May 2008. The Lehman brothers fiasco happened in mid-September 2008.

j. The internal note for the finalization of terms for the 5th delivery period is of 03.06.2008 which expressed the concern that the spot price for coal was US$ 400 PMT FOB.

k. The Addendum signed on 20.11.2008 followed after the quantity of 2366 MT as part of the 5th delivery period had already been shipped. The explanation of the learned ASG is that this was only to save dead freight.

l. SPCoD approval Minutes of 06.10.2008 was also signed by Mr. H.S. Mann whose initial note of April 2008 was one of the main points urged by MMTC before us. The approval also noticed the recent fall in prices of pig iron and steel products and did in fact suggest exploring possibility of reduction in quantity.

m. The explanation of Anglo that NINL had no say in the quantity since the quantity was fixed in the LTA and MoU and that in fact, NINL's approval was only for the specification is a plausible one.

n. That MMTC purchased coal from BMA at US$ 300/292 PMT which had not been disputed and in fact the argument in the proceedings to set aside the award was based on the price paid to BMA to contend that no damages occurred to Anglo. Further, the stand of the learned ASG insofar as the supply by BMA is concerned as dealt with above shows that there was indeed supply

by BMA at the rate of US$ 292 PMT and US$ 270 PMT, though the period of carryover offered may have been different.

o. The exercise of writing a letter on 20.11.2008, namely, the same day as the Addendum No.2 has been explained as an attempt by MMTC to renegotiate the price. Per se on this basis and without anything more, nothing sinister could be imputed. There has been no convincing explanation from the appellant to the argument of Anglo that the common course of human conduct of conspiring parties would be to lift the coal at the agreed price, pay the amount and share the booty, instead of litigating for 15 years.

p. The subsequent correspondence and the context in which they were written viewed in the background of the findings of this Court do not indicate that it was a friendly fight intended to commit certain admissions in the correspondence. On the concept of carryover also, the explanation by Anglo that there was no discrimination between the contract with MMTC and contract with SAIL and that a carryover offered in the respective contracts have to be viewed in the background of the "delivery periods in question" of the respective contracts is a plausible explanation borne out from the records.

q. A First Information Report by itself is only a document to set in motion a legal process. It is the version of one party and by itself we are not able to, for the reasons set out above, declare that the award upheld by this Court should be rendered inexecutable.

r. The argument that Mr. Ved Parkash orchestrated the arbitration and the litigation before the High Court of Delhi and facilitated success for Anglo is also not convincing because when Mr. Ved Prakash was at the helm, the Section 37 proceedings were prosecuted by MMTC successfully. While Ved Prakash retired on 29.02.2020 the Delhi High Court pronounced its judgement in favour of MMTC on 02.03.2020.

s. Ultimately, the arbitration was fought over a period of 2 years before the arbitrators and the matter was fought in the Delhi High Court and this Court for over a period of 6 years till this court restored the award and set aside the judgment of the Division Bench.

t. The only two arguments raised before the arbitrators and Court were:-

i. Anglo was incapable of supplying the agreed quantity.

ii. In any event, there was no loss in the form of damages as the market price was in the range of

US$ 300 PMT as is evident from the supply done by BMA.

CONCLUSION: -

95. In the light of the above analysis, we are not able to conclude, on the material furnished before us, that the Senior Managerial personnel involved at the helm in MMTC during the relevant period acted in a manner as no reasonable personnel/director in the circumstances would have acted. We are also not able to conclude on the material furnished that the decisions taken were not within the range of reasonableness or that the course adopted by them was not one, a reasonably competent personnel/director would adopt. Applying the business judgment rule, the course adopted by them cannot be said to be one to which a court of law would not defer to. The appellants have not been able to even *prima facie* demonstrate that circumstances exist to conclude that the personnel of MMTC did not act in the best interest of the company.

96. The appeal challenges, in the prayer clause, the judgment dismissing the objections in OMP (ENF.) (COMM.) 19 of 2018. Though in the prayer clause, there is no challenge to dismissal of the application under Order XXI Rule 29 filed in EX/application (OS) 1806 of 2024, in Para 1 of the civil appeal the appellants have indicated that they are aggrieved by the said order also. Order XXI Rule 29 provides for stay of execution pending suit between decree holder and judgment debtor. We were, however, told that the suit filed itself now stands rejected under Order VII Rule 11 but a regular first appeal in RFA-28 of 2025 has been filed. Hence, an occasion for considering an Order XXI Rule 29 Application does not arise.

97. We are dealing with an objection filed under Section 47 claiming that the award as upheld by this Court is inexecutable. As held by this Court in ***Electrosteel (Supra)*** the jurisdiction lies in a narrow compass. It is the mandate of this Court that the object of Section 47 is to prevent unwarranted litigation and dispose of all objections as expeditiously as

possible. This Court has warned that there is a steady rise of proceedings akin to a retrial which causes failure of realization of the fruits of a decree, unless prima facie grounds are made out entertaining objections under Section 47 would be an abuse of process.

98. An objection petition under Section 47 should not invariably be treated as a commencement of a new trial. In ***Rahul S. Shah*** Vs ***Jinendra Kumar Gandhi and Ors.,***[14] this Court had the following telling observations to make.

> **"24.** In respect of execution of a decree, Section 47 CPC contemplates adjudication of limited nature of issues relating to execution i.e. discharge or satisfaction of the decree and is aligned with the consequential provisions of Order 21 CPC. Section 47 is intended to prevent multiplicity of suits. It simply lays down the procedure and the form whereby the court reaches a decision. For the applicability of the section, two essential requisites have to be kept in mind. *Firstly*, the question must be the one arising between the parties and *secondly*, the dispute relates to the execution, discharge or satisfaction of the decree. Thus, the objective of Section 47 is to prevent unwanted litigation and dispose of all objections as expeditiously as possible.
>
> **25.** These provisions contemplate that for execution of decrees, executing court must not go beyond the decree. However, there is steady rise of proceedings akin to a retrial at the time of execution causing failure of realisation of fruits of decree and relief which the party seeks from the courts despite there being a decree in their favour. Experience has

[14] (2021) 6 SCC 418

shown that various objections are filed before the executing court and the decree-holder is deprived of the fruits of the litigation and the judgment-debtor, in abuse of process of law, is allowed to benefit from the subject-matter which he is otherwise not entitled to.

26. The general practice prevailing in the subordinate courts is that invariably in all execution applications, the courts first issue show-cause notice asking the judgment-debtor as to why the decree should not be executed as is given under Order 21 Rule 22 for certain class of cases. However, this is often misconstrued as the beginning of a new trial. For example, the judgment-debtor sometimes misuses the provisions of Order 21 Rule 2 and Order 21 Rule 11 to set up an oral plea, which invariably leaves no option with the court but to record oral evidence which may be frivolous. This drags the execution proceedings indefinitely.

27. This is antithesis to the scheme of the Civil Procedure Code, which stipulates that in civil suit, all questions and issues that may arise, must be decided in one and the same trial. Order 1 and Order 2 which relate to parties to suits and frame of suits with the object of avoiding multiplicity of proceedings, provides for joinder of parties and joinder of cause of action so that common questions of law and facts could be decided at one go."

POSTSCRIPT :-

99. Before we part, a small postscript. Whether in Government, Public Sector Corporations or even in the private sector, the driving force of the entity are the persons who administer them. A certain play in the joints is inevitable for their day-to-day functioning. If they are shackled with the

fear that, their decisions taken for the day-to-day administration, could years later with the benefit of hindsight, be viewed with a jaundiced eye, it will create a chilling effect on them. A tendency to play it safe will set in. Decision making will be avoided. Policy paralysis will descend. All this will in the long run prove detrimental not just to that entity but to the nation itself. We are not to be understood to be condoning decisions taken for improper purposes or extraneous considerations. All that we are at pains to drive home is that great caution and circumspection have to be exercised before such allegations are brought forward and adequate proof must exist to back them. Otherwise for fear that carefully built reputations could be casually tarnished, best of talent will not be forthcoming, especially for government and public sector corporations.

100. In view of what is stated hereinabove, we find no merit in the objections filed by MMTC under Section 47 of the CPC.

There are no good grounds to entertain the same. The appeal is dismissed. No order as to costs.

.....J.
[**SANJAY KUMAR**]

.....J.
[**K. V. VISWANATHAN**]

New Delhi;
3rd November, 2025