

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL ARBITRATION PETITION (L) NO. 404 OF 2020**
Standard Retail Pvt. Ltd. ... Petitioner
V/s
M/s. G. S. Global Corp & Ors. ... Respondents

**WITH
COMMERCIAL ARBITRATION PETITION (L) NO. 406 OF 2020**
Integral Industries Pvt. Ltd. ... Petitioner
V/s
M/s. G. S. Global Corp. & Ors. ... Respondents

**WITH
COMMERCIAL ARBITRATION PETITION (L) NO. 405 OF 2020**
Vinayaga Marine Petro Ltd. & Anr. .. Petitioners
V/s
M/s. G. S. Global Corp. & Ors. ... Respondents

**WITH
COMMERCIAL ARBITRATION PETITION NO. 408 OF 2020**
Hariyana International Pvt. Ltd. ... Petitioner
V/s
M/s. Hyundai Corporation & Ors. ...
Respondents

**WITH
COMMERCIAL ARBITRATION PETITION NO. 407 OF 2020**
Prabhat Steel Traders Pvt. Ltd. ... Petitioner
V/s
M/s. Hyundai Corporation & Ors. ...
Respondents

Mr. S. B. Deshmukh a/w. Uttam Rane for the Petitioners.
Mr. Vineet Naik, Senior Advocate a/w. Mr. Mohit Arora a/w. Rajat T.
i/b. Tuli and Co. for the Respondent No. 1 in CARPBPL/404/2020,
CARPBPL/405/2020, CARPBPL/406/2020
Ameya Gokhale a/w. Veena Sivaramakrishnan a/w. Vaibhav Singh i/
b. Shardul Amarchad Mangaldas & Co. for the Respondent No. 1 in

CARPBPL/407/2020 & CARPBPL/408/2020

Mr. Akshay Kolse-Patil a/w. Mr. Avinav Mukharjee i/b. Kochar & Co.
for the Respondent No. 3-Wells Fargo Bank.

CORAM : A. A. SAYED, J
DATED : 8th APRIL, 2020

P.C.:

The above Petitions have been filed under section 9 of the Arbitration and Conciliation Act seeking directions restraining the Respondent-Bank from negotiating/ encashing the Letters of Credit.

2. It is the case of the Petitioners that in view of the COVID-19 pandemic and the lockdown declared by the Central/State Government, its contracts with Respondent No. 1 were terminated as unenforceable on account of frustration, impossibility and impracticability. The Petitioners have relied upon Section 56 of the Indian Contract Act, 1972.

3. Under the Contracts the Respondent No. 1 which has its head office at South Korea was to supply certain steel products, the shipments of which were to be dispatched from South Korea, to the Petitioners at Mumbai. The contracts were subject to General Terms and Conditions, Articles 11 and 12 whereof read as follows:

"Article 11. Force Majeure: In the event of an Act of

God (including but not limited to floods, earthquake, typhoons, epidemics and other natural calamities), war or armed conflict or serious threat of the same, government order or regulation, labor dispute or any other similar cause beyond the control of "Seller" or any of its suppliers or sub-contractors which seriously affects the ability of "Seller" or any of its suppliers or sub-contractors to manufacture and deliver the "Goods", "Seller" may, at its sole discretion and upon written notice to "Buyer" either terminate the Contract or any portion affected thereof by such event(s), or delay performance of the Contract, in whole or in part, for a reasonable period of time. Any such delay of performance by "Seller" shall not preclude "Seller's" later right to terminate the Contract or any portion affected thereof by such event(s). In no event shall "Seller" be liable to "Buyer" or to any third party for any costs or damages arising indirectly or consequentially from such non-fulfillment of or delay in the performance of all or part of the Contract"

Article 12. Governing Law & Arbitration: The Contract shall be governed by and construed in accordance with the Laws of Korea/Singapore/London. All disputes, controversies or differences which may arise between the parties, out of or in relation to or in connection with the Contract, or for the breach thereof, shall be finally settled by arbitration in Seoul, Korea/Singapore/London in accordance with the Commercial Arbitration Rules of the respective Commercial Arbitration Board and under the Laws of Korea/Singapore/London. The award rendered by the arbitration shall be final and binding upon both parties concerned."

4. Having heard learned Counsel for the Petitioners and learned Senior Counsel for the Respondent No. 1 (in the first 3 Petitions), Learned Counsel for the Respondent No. 1 (in the last 2 Petitions), the learned Counsel for the Respondent No. 3-Bank (in

the first 3 Petitions), in my view the Petitioners are not entitled to any ad-interim reliefs for the reasons stated herein-below:

a. The Letters of Credit are an independent transaction with the Bank and the Bank is not concerned with underlying disputes between the Petitioners who are buyers and the Respondent No. 1 who is the seller.

b. The Force Majeure clause in the present contracts is applicable only to the Respondent No. 1 and cannot come to the aid of the Petitioners.

c. The contract terms are on Cost and Freight basis (CFR) and the Respondent No. 1 has complied with its obligations and performed its part of the contracts and the goods have been already shipped from South Korea. The fact that the Petitioners would not be able to perform its obligations so far as its own purchasers are concerned and/or it would suffer damages, is not a factor which can be considered and held against the Respondent No. 1.

d. The Notifications/Advisories relied upon by the learned Senior Counsel for the Respondent No. 1 does suggest that the distribution of steel has been

declared as an essential service. There are no restrictions on its movement and all ports and port related activities including the movement of vehicles and manpower, operations of Container Freight Station and warehouses and offices of Custom Houses Agents have also been declared as essential services. The Notification of the Director General of Shipping, Mumbai, states that there would be no container detention charges on import and export shipments during the lockdown period.

e. In any event, the lockdown would be for a limited period and the lockdown cannot come to the rescue of the Petitioners so as to resile from its contractual obligations with the Respondent No. 1 of making payments.

f. The Judgments relied upon by the learned Counsel for the Petitioner in Energy Watchdog Versus CERC (2017) 14 SCC 80 and Satyabrata Ghose Versus Mugneeram Bangure & Co. (1954) SCR 310 do not assist the case of the Petitioners and are distinguishable on facts .

5. In the light of the above, ad-interim reliefs shall stand rejected.
6. List the Petitions as per CMIS date.
7. All concerned to act on the ordinary copy of this order duly authenticated by the Personal Assistant.

(A. A. SAYED, J.)

