

**IN THE SUPREME COURT OF INDIA  
INHERENT JURISDICTION**

**Contempt Petition (Civil) No 691 of 2020**

**in**

**Civil Appeal No 262 of 2020**

**Vedanta Ltd**

**... Petitioner(s)**

**Versus**

**R N Mohapatra & Ors**

**... Respondent(s)**

**ORDER**

1 By an order dated 14 January 2020, a mutually acceptable arrangement was arrived at between National Aluminium Company Limited<sup>1</sup> and Vedanta Limited<sup>2</sup> in terms of which the Civil Appeal<sup>3</sup> was disposed of. The order of this Court provided for the following arrangement:

- (i) VL would apply to NALCO through a foreign subsidiary which would be registered by NALCO if the application was in accordance with its requirements;
- (ii) NALCO accepted that it would register Vedanta Resources Limited<sup>4</sup>, a UK based company or any other foreign subsidiary of VL which was eligible to participate in its tenders for calcined alumina;

1 "NALCO"

2 "VL"

3 "Civil Appeal No 262 of 2020"

4 "VRL"

- (iii) The delivery of the consignment would be taken at Vishakhapatnam Port on an FOB basis though the consignments would be for use in VL SEZ at Jharsuguda, Odisha; and
- (iv) As required by NALCO, in its affidavit dated 10 January 2020, VL undertook to provide to NALCO the bill of export and certification of goods having been admitted to enter into SEZ by the concerned officer of the SEZ in terms of Rule 30 of the SEZ Rules.

2 The judgment of the High Court of Orissa, which was in appeal, was disposed of in terms of the above arrangement.

3 An application<sup>5</sup> for modification of the order dated 14 January 2020 was moved by NALCO. The modification was the exclusion of the following part of the order; namely:

"though the same will be used in M/s Vedanta Limited SEZ at Jharsuguda, Odisha",

and

"As desired by NALCO in its affidavit dated 10.01.2020, the respondent - M/s Vedanta Limited undertakes to provide to NALCO the bill of export and certification of goods having been admitted into the SEZ by the concerned officer of the SEZ as per Rule 30 of the SEZ Rules."

4 The application was dismissed on 5 June 2020.

5 While exercising its jurisdiction pursuant to the initiation of contempt proceedings<sup>6</sup> against NALCO, this Court passed an order on 19 August 2020. The order of this Court notes that though VRL UK had been granted registration so as

5 "MA No 1010 of 2020

6 "Contempt Petition (C) No 466 of 2020"

to be eligible to participate in NALCO's tenders for calcined alumina, their grievance was that NALCO was not effecting delivery at Vishakhapatnam Port on an FOB basis. The Court disposed of the contempt proceedings in the following terms:

- (i) On behalf of NALCO it was stated that it would effect delivery of each consignment at Vishakhapatnam Port on an FOB basis if it is meant to be used in VL SEZ, Jharsuguda, Odisha; and
  - (ii) On behalf of VL, it was stated that the grievance of VL would stand redressed if delivery is effected at Vishakhapatnam Port on an FOB basis for the use of the material in the SEZ and that VL would provide a bill of export and necessary certification in terms of the order dated 14 January 2020.
- 6 Difficulties have arisen in the course of the implementation of the order resulting in the initiation of a fresh round of contempt proceedings.
- 7 The view point of NALCO has been presented by Mr K K Venugopal, learned Attorney General with Dr Kedar Nath Tripathy and Ms Suhasini Sen, learned counsel. Mr A Sundaram and Mr A N S Nadkarni, learned senior counsel, with Mr Rohan Shah, learned counsel, appeared on behalf of VL.
- 8 During the course of the hearing, the Court has also interacted on the video-conferencing platform with Mr R N Mohapatra, Executive Director of NALCO, who has fairly assisted the Court on all aspects on which queries arose during the course of the hearing.

9 The factual position which has been indicated before the Court by the Executive Director of NALCO is as follows:

- Two orders each for 30,000 MT were duly executed by VRL on 5 March 2021 and 16 April 2021;
- For four orders each covering a total quantity of 30,000 MT where VRL was the highest bidder could not be executed;
- Orders each of 30,000 MT dated 3 July 2021 and 16 March 2022 remain to be executed.

10 The factual narration which is based on the data submitted by the Executive Director of NALCO would, thus, indicate that a total quantity of 1,80,000 MT covering six bids has not been executed as of date. The dispute in the present case has arisen because of the insistence of NALCO on the production of a 'Let Export' Order.

11 The submission which has been urged on behalf of NALCO by the Attorney General is that unless all procedural requirements of NALCO are duly fulfilled, NALCO would not be in a position to receive duty drawback benefits from the Union Government since the tenders for calcined alumina are intended for the sale of goods to foreign purchasers. The Attorney General urged that though payment is being made by VRL UK, the goods are sought to be utilised by the SEZ at Jharguda. Hence, it is apprehended that NALCO may not receive drawback benefits.

12 On the other hand, it has been submitted by Mr A Sundaram on behalf of VL that any procedural requirement beyond those that are contemplated by the order of

this Court dated 14 January 2020, as reiterated on 19 August 2020, cannot be insisted upon, at this stage, since the parties had agreed to a mutual acceptable resolution which has been recorded by the Court. Moreover, it was urged that the dispute falls purely in the realm of contract and until NALCO revises its tender conditions, it will be bound to implement the contractual conditions.

13 In order to allay the apprehension of NALCO that they would stand to lose the export benefits, it has been agreed by VL that a revolving corporate guarantee, together with an undertaking to this Court would be provided by VL to cover the quantum of export benefits which would be available to NALCO against each consignment which is sold in terms of the arrangement which was recorded on 19 August 2020 so that in the event that NALCO fails to receive the export benefits, it would be duly secured.

14 During the course of the hearing, Mr A Sundaram has submitted that though the total quantum covered by the six orders for which VRL UK was the H-1 bidder stands at 1,80,000 MT, VL would fairly leave the amount which would be supplied to it to a fair resolution..

15 At this stage, it would also be necessary to record the submission of the Attorney General that for the future NALCO reserves its right to modify the tender conditions to specifically stipulate that the tender enquiries which are being issued by NALCO are only for the purpose of sale of calcined alumina to parties situated outside the territory of India and specifically to the exclusion of SEZs situated within India.

16 In the above backdrop, we issue the following directions:

(i) NALCO shall, from the period commencing on 1 May 2022 and ending on

31 July 2022, allocate a total quantity of 90,000 MT to VRL UK in full and final settlement of the entire outstanding quantity which has remained to be executed in respect of the entire period of dispute;

- (ii) The price which shall be payable by VRL UK to NALCO shall be at the weighted average of the six subject bids of VRL UK where it was the highest bidder;
  - (iii) In advance of the actual delivery of each consignment at Vishakhapatnam Port on an FOB basis and at least two working days prior thereto, VL SEZ, Jharsuguda, Odisha shall provide a revolving corporate guarantee in favour of NALCO to cover the entirety of the export benefits estimated by NALCO to accrue to NALCO on account of the concerned sale. In the event that, for any reason, NALCO is unable to realize the export benefits, it would be at liberty to invoke the corporate guarantee in which event payment to NALCO shall be made within a period of two working days of the date of invocation without any demur or objection. In addition to the corporate guarantee, an undertaking shall be submitted to this Court recording its obligation to abide by the terms of the present order;
  - (iv) The GST invoices shall be raised in the name of VL SEZ, Jharsuguda, Odisha; and
  - (v) The entirety of the sale price which is payable to NALCO shall be payable in foreign currency by VL SEZ, Jharsuguda, Odisha in terms of the order of this Court dated 19 August 2020.
- 17 The above arrangement represents a comprehensive resolution of all disputes in respect of past tenders. The terms of the existing arrangement shall continue

until NALCO substitutes the existing tender conditions with a fresh set of tender conditions applicable to future tenders, which it is at liberty to do.

18 This Court has had no occasion to render any adjudication on the validity of the new tender conditions proposed by NALCO.

19 In view of the settlement of all disputes between the parties by the present order, the question of contempt does not arise. These proceedings are accordingly closed.

20 Pending application, if any, stands disposed of.

.....J.  
**[Dr Dhananjaya Y Chandrachud]**

.....J.  
**[A S Bopanna]**

.....J.  
**[V Ramasubramanian]**

**New Delhi;**  
**April 28, 2022**  
**-S-**

ITEM NO.301

COURT NO.4

SECTION XI-A

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

CONMT.PET.(C) No. 691/2020 in C.A. No. 262/2020

VEDANTA LTD.

Petitioner(s)

VERSUS

R. N. MOHAPATRA &amp; ORS.

Respondent(s)

(FOR ADMISSION and IA No.117588/2020-EXEMPTION FROM FILING AFFIDAVIT and IA No.117575/2020-PERMISSION TO FILE APPLICATION FOR DIRECTION, IA No. 72741/2021 - EXEMPTION FROM FILING AFFIDAVIT, IA No. 4041/2021 - EXEMPTION FROM FILING AFFIDAVIT, IA No. 4040/2021 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES, IA No. 37806/2021 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES

Date : 28-04-2022 This petition was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD  
HON'BLE MR. JUSTICE A.S. BOPANNA  
HON'BLE MR. JUSTICE V. RAMASUBRAMANIAN

For Petitioner(s) Mr. A. Sundaram, Sr. Adv.  
Mr. A.N.S. Nadkarni, Sr. Adv.  
Mr. Rohan Shah, Adv.  
Mr. P. S. Sudheer, AOR  
Mr. Ninad Laud, Adv.  
Mr. Udayan Varma, Adv.  
Ms. Shruti Jose, Adv.  
Ms. Ananyaa Mazumdar, Adv.

For Respondent(s) Mr. K.K. Venugopal, AG  
Dr. Kedar Nath Tripathy, AOR  
Ms. Suhasini Sen, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

1 In view of the settlement of all disputes between the parties by the present order, the question of contempt does not arise. These proceedings are accordingly closed in terms of the signed order.

2 Pending application, if any, stands disposed of.

**(SANJAY KUMAR-I)**  
**AR-CUM-PS**

**(SAROJ KUMARI GAUR)**  
**COURT MASTER**

**(Signed order is placed on the file)**