



ARBITRATION CASE NO.298/2021.
(CNR Number: MHLA010020552021)

ORDER BELOW EXH.5.

(National Highways Authority of India V/s.
The CALA & other 2)

- 1] The applicant herein has filed this proceeding under section 34 of the Arbitration and Conciliation Act, 1996 (Hereinafter referred to as "the Arbitration Act" for the sake of convenience), challenging the Award No.2020/Arbitrator/NHAI/Ausa-2/CR-709 dated 02.03.2021 passed by the Arbitrator at Latur.
- 2] By way of this application, the applicant has prayed for stay of execution of the award dated 02.03.2021,
- 3] The Respondent No.1 the Competent Authority of Land Acquisition (in short "C.A.L.A.") by filing pursis vide Exh.27 has objected this application and submitted that the contents of award passed by CALA may kindly be considered as say to this interim application.
- 4] The Respondent Nos.2 & 3 have filed their say vide Exh.22 to this stay application and have raised objection.
- 5] Heard learned Adv. Shri Pradip S. Akkangire for applicant and Ld. A.P.P. Shri S.V. Deshpande for respondent No.1, and Ld. Adv. Shri B.V. Mitkari, for respondent Nos.2 & 3. The applicant have also filed written argument at Exh.28. Perused the same.

6] It is submitted by the applicant-National Highways Authority of India (In short "NHAI") that :-

(a) There are many law points involved in this case. It may take considerable time to decide the main proceeding on merit. Till that time, if the award is executed the applicant/NHAI may suffer great financial loss.

(b) However, meantime the respondent no.2 to 4 have moved the Executing Court by filing execution petition and the Executing Court may direct the applicant to deposit the amount which is in lakhs. Hence, it is necessary to stay the said execution proceeding.

7] As against this, it is submitted by the respondent no.2 to 4 that :-

(a) As per the order passed by the Arbitrator the NHAI is under duty to deposit the amount.

(b) As well, as per Rule 3(b) of the National Highways (Manner of depositing the amount by the Central Government; making requisite funds available to the Competent Authority for acquisition of land) Rules, 2019, (for the sake of brevity, "The said Rules"), the Applicant is under duty to deposit the said amount.

(c) Hence, application be rejected.

8] In view of these submissions, I perused the documents filed by both the parties. It appears that the award passed by the Ld.Arbitrator is under challenge. The Execution proceeding

No.365/2022 is filed by the Respondent Nos. 2 & 3 against the NHAI is pending in the Court of the 4th Jt.Civil Judge, S.D., Latur. If, the NHAI would be ordered by the said Court to deposit the amount in the Court, definitely the Respondent No.2 & 3 may withdraw the same and in that case, the proceeding filed under section 34 of the Arbitration Act, would become infructuous. Hence, it has become necessary to stay the execution of award.

9] As per Section 36 of the Arbitration Act, filing of proceeding under section 34 of the Arbitration Act, is not automatic stay of enforcement of award. The Court has discretion to grant stay, which may be subject to such conditions as it may deems fit.

10] In view of submission of Ld. Advocate for Respondent No.2 & 3, I perused **Rule No.3(b)** of the said Rules. The said Rule is as under :-

“Where the amount determined by the Arbitrator under sub-section(7) of Section 3-G of the Act is in excess of the amount determined by the competent authority, the excess amount, together with interest, if any, awarded by the Arbitrator, within 30 days of the communication of Arbitrator’s award, unless such Award has been further challenged by either of the aggrieved parties”.

11] As the present proceeding is going on, the Award is under challenge. Considering this, if half of the awarded amount is directed to be deposited by the applicant / NHAI, that would suffice the purpose.

12] Now, Darkhast bearing No.365/2022 is pending before the Court of the 4th Jt.Civil Judge, S.D., Latur, for an amount of

Rs.1,77,52,717/-.

13] In view of these observations, the following order is passed.

ORDER

(1) Execution and operation of an Award dated 02.03.2021 passed by the learned Arbitrator in Case No.2020/Arbitrator/NHAI/Ausa-2/C.R.-709, is hereby stayed subject to following conditions :-

(a) The applicant / National Highways Authority of India, Project Implementation Unit-Nanded to deposit half of the awarded amount in the Executing Court till 24/11/2023.

(b) The aforesaid amount shall remain in the custody of the Executing Court till final disposal of the present proceeding on merits.

(c) The Executing Court shall take immediate steps to invest the deposited amount (as per directions given in Clause-(a)) herein-above in any Nationalized Bank in fixed deposit scheme till final disposal of the present proceeding.

(d) The present proceeding is expedited.

(e) Both the parties shall extend their co-operation to this Court to decide the present proceeding on merits, as early as possible.

Sd/-

(Smt. S.S.Kosamkar)

Principal District Judge, Latur.

Latur.

Date: 29.09.2023.