

IN THE COMMERCIAL COURT AT ALIPORE

Present: Smt. Suparna Ray (JO Code:WB00711)

Misc Case Arb 10 of 2023
Renumbered as Misc. Arb (Com) 63 of 2023
CNR No. WBSP18-000025-2023

Durgapur Freight Terminal Private Limited.

.....Petitioner

vs.

Titagarh Logistics Infrastructures Private Limited & 02 Ors.

.....Respondents

Order No. 45

Date: 06.01.2026

Today is fixed for passing order in respect of I.A. No. 03 of 2024 and I.A. No. 04 of 2025.

Petitioner, Respondent nos. 1 and 2 have filed their respective haziras.

Now, the record is taken up for passing order.

I.A. No. 03 of 2024 & I.A. No. 04 of 2025

The instant case has been filed by the petitioner herein for setting aside of an arbitral award dated 17.11.2022 passed by the arbitral tribunal duly constituted to adjudicate the disputes arising out of an agreement dated 01.01.2017 executed between the parties.

In terms of the said award, the respondent no. 1 herein is entitled to a sum of Rs. 3,63,14,430/-. The respondent no. 1 was also granted an award for eviction of the petitioner from the subject premises.

After passing the aforesaid award, the said respondent has also filed Execution Proceedings, being Arb Ex. Case No. 03 of 2023 before the Commercial Court at Asansol, which is pending.

The petitioner being the Durgapur Freight Terminal Private Limited (for short DFTPL) in the instant proceeding filed an application for stay of operation of the said arbitral award under Section 36(2) of the Arbitration and Conciliation Act, 1996 and therein, by an Order dated 28th March, 2023, this Court stayed the operation and execution of the said award subject to furnish a bank guarantee of Rs. 3,73,14,430/- by the petitioner in favour of the respondent no. 1 within four weeks from the date of such order and further directed to the petitioner to pay Rs. 11,00,000/- per month to the respondent no. 1 to remain in possession of the subject property. However, for conspicuity, the order of this Court needs to be set out hereunder:

“.....this court is of considered view that the present application under section 36(2) of the Arbitration and Conciliation Act, 1996 is allowed on contest and the impugned award dated 17.11.2022 is hereby stayed during pendency of the application under section 34 of the Act, subject to deposit of sum of Rs. 3,73,14,430/- by the Petitioner in the form of Bank Guarantee in favour of the Respondent within four seeks and since, an order of eviction has been passed by the Ld. Arbitral Tribunal, hence, in order to retain possession, the petitioner is also further directed to pay Rs. 11 lakh per month to the respondent within 7th day of each succeeding month according to the English Calendar month with immediate effect.”

This order shall automatically stand vacated in the event of default on the part of the petitioner in respect of the aforesaid direction."

Thereafter, petitioner filed an application praying before this Court praying for extension of time to furnish the aforesaid Bank Guarantee in terms of the Order dated 28.03.2023 passed by this Court and this Court by an Order dated 25.04.2023 rejected the said application.

Being aggrieved by the said Order dated 28.03.2023 passed by this Court, the petitioner then, filed a civil revision application before the Hon'ble High Court at Calcutta being registered as C.O. 1493 of 2023 wherein the Hon'ble Court by an Order dated 14th June, 2023 was pleased to dispose of the said revision application directing as follows:

"Costs of Rs. 1,00,000/- shall be paid to the opposite party no. 1 within the course of June 15, 2023. With regard to the prayer for payment of occupation charges from the date of the award, the opposite party no. 1 will be at liberty to approach the learned executing court for necessary orders. If such application is filed, the same shall be disposed of in accordance with law upon contested hearing.

Now, with regard to the bank guarantee, the petitioner is directed to deposit the same in the learned Court below by June 19, 2023. The learned Court below is requested to post the matter on June 20, 2023 in order to ascertain compliance of the order of this Court. Although the matter has been posted tomorrow, total compliance of this order may not be possible and hence such request is being made by the Court.

The learned Judge, Commercial Court at Asansol shall proceed with the execution proceeding being Arbitration Execution Case No. 3 of 2023 expeditiously if the order of this Court is not complied with. In the event of compliance, the execution proceeding shall remain stayed. Any default in payment of the occupational charges as already directed, shall also amount

to vacation of the interim order that is being passed by this Court, without further reference to the court.”

Then, the Hon'ble Court by an Order dated 19.06.2023 modified the Order dated 14.06.2023 to the extent of direction in respect of payment of occupational charges as the same had already been decided. The niche averment expounded in the Order dated 19.06.2023 is reproduced hereunder:

“As this aspect was not gone into although it was a part of the revisional application, the error cropped up in the order dated June 14, 2023. The sentences in paragraph 2 of the said orders, namely, “With regard to the prayer for payment of occupation charges from the date of the award, the opposite party no. 1 will be at liberty to approach the learned executing court for necessary orders. If such application is filed, the same shall be disposed of in accordance with law upon contested hearing.” is deleted by modifying the order dated June 14, 2023.”

By virtue of the Orders of the Hon'ble Court, the petitioner thereby furnished three bank guarantees, which are as follows:

- a. Bank Guarantee dated 27th April 2023, numbered 0188NDG00001424 for Rs. 1,00,00,000, which was to expire on 26 April 2024.
- b. Bank Guarantee dated 15th May 2023, numbered LOBG601032304416 for Rs. 1,80,00,000, which was to expire on 09 May 2024.
- c. Bank Guarantee dated 16th June 2023, numbered 0188NDG00003224 for Rs. 93,14,430, which was to expire on 15 June 2024.

However, the bank guarantees referred to above expired on 26.04.2024, 09.05.2024 and 15.06.2024 respectively.

Therefore, as per the Order of this Hon'ble Court as well as this Court also, on the days of expiration of the bank guarantees stated

above, there has been no order of stay of the execution of the award impugned. With respect to that, niche direction of the Hon'ble Court in Order dated 14.06.2023 is as follows:

"The learned Judge, Commercial Court at Asansol shall proceed with the execution proceeding being Arbitration Execution Case No. 3 of 2023 expeditiously if the order of this Court is not complied with. In the event of compliance, the execution proceeding shall remain stayed."

The niche direction of this Court in the order dated 25.04.2023 is also set out hereunder:

"This order shall automatically stand vacated in the event of default on the part of the petitioner in respect of the aforesaid direction."

That being the aforesaid scenario, the respondent no. 1 has filed the application being registered as I.A. No. 03 of 2024 on 19.11.2024 for declaration of vacation of this stay order dated 28.03.2023 passed by this Court.

The contention of the respondent no. 1 in the I.A. No. 03 of 2024 is that despite the respective expiry of the bank guarantees, which were furnished as a condition to secure stay of operation of part of the award, the petitioner did not renew or extend the same or attempt to furnish fresh bank guarantees for the period immediately after the expiry of the three respective bank guarantees. As a result, the petitioner is in breach of the Order dated 14.06.2023 which required the petitioner to furnish bank guarantees as a condition precedent to enjoy stay of the award, which in turn would entitle the petitioner to enjoy stay of the execution proceeding levied by the respondent no. 1.

Learned Advocate appearing for the respondent no. 1 has submitted that having failed to furnish the bank guarantees with effect from the expiry date of the three bank guarantees originally furnished in terms of the order dated 28 March 2023 of this Court and the Order dated 14 June 2023 of the Hon'ble High Court at Calcutta, there is no stay, the petitioner is not entitled to continue enjoying stay of operation of the award dated 17.11.2022, in so far as the monetary part of such award is concerned. By virtue of the said two orders, the stay on operation and execution of the award stands automatically vacated on the expiry of the bank guarantees. The stay of the award was conditional on the valid operation of the bank guarantees. Its subsequent expiry and non-renewal or non-existence results in vacating the order of stay, as per the directions of the said orders.

It is also to noted that the respondent no. 1 preferred an S.L.P. before the Hon'ble Apex of Court India in respect of the Order dated 14.06.2023 in C.O. No. 1493 of 2023 and the Order dated 19.06.2023 in CAN No. 1 of 2023 passed by the Hon'ble High Court at Calcutta. However, till date there is no order of stay of the Hon'ble Supreme Court of India of the aforesaid orders passed by the Hon'ble High Court.

Therefore, the issue which needs to be determined here whether in the aforesaid scenario the bank guarantees filed by the petitioner are to be accepted or not.

It appears from the record that in connection with CO 2780 of 2025 the Hon'ble High Court passed an Order dated 31.07.2025 wherein the Hon'ble Court held as follows:

“Mr. Mukherjee, learned advocate appearing for the petitioner, on instruction, submits that his client is ready and willing to five cash

security. However, in course of hearing it transpires that there is a dispute as to the amount of cash security.

In view of such submission, this court is not inclined to enter into such a dispute at this stage and deems fit to leave it open for the learned Judge of the Commercial Court to decide the aspect of furnishing the cash security or for furnishing fresh bank guarantee in accordance with law."

In the instant case the petitioner has already filed the aforesaid bank guarantees and in view of that filed the I.A. No. 04 of 2025 for acceptance of the said bank guarantees. The contention of the petitioner is that petitioner tried to renew the said bank guarantees but due to some technical failure, which is beyond the control of the petitioner, the petitioner could not file the same. It is further contention that as soon as the petitioner was advised from its learned Advocate, the petitioner filed the instant application before this Court for acceptance the renewed bank guarantees. However, it is also appeared that the petitioner paid monthly occupational charges and the respondents have been accepted the same without any protest or demurer but, the petitioner has failed to furnish the bank guarantees within time. *Albeit*, it is not deniable that the petitioner failed to renew the aforesaid bank grantees within time. But till date, the same has not been revoked. Now, the petitioner by filing the instant application prays extension of time to deposit 'bank grantees', which were the condition precedent for staying the operation of the impugned award. Admittedly no notice was sent to that effect for renewal. In view of the discussion made hereinabove and for ends of justice the said bank guarantees, to be filed by the petitioner, should be accepted .

Therefore, in the facts and circumstances, this Court is inclined to allow the I.A. no. 04 of 2025 upon acceptance of the bank guarantees being 190BG03250350001 dated 04.02.2025, 190BG03250350002 dated 04.02.2025 and 190BG03250350003 dated 04.02.2025 aggregating to Rs. 3,73,14,430/- on contest and the application being I.A. no.04 of 2025 is **disposed off**. Accordingly, the petitioner is hereby directed to deposit the said bank guarantees being 190BG03250350001 dated 04.02.2025, 190BG03250350002 dated 04.02.2025 and 190BG03250350003 dated 04.02.2025 aggregating to Rs. 3,73,14,430/- before the learned Registrar, Alipore Judges Court within five (05) days of passing the instant order. Learned Registrar is requested to accept the same in accordance with the extant procedure and keep the same in his custody till further order.

After deposition of the aforesaid bank guarantees within the aforesaid time limit, learned Registrar is requested to intimate this Court.

It appears that in I.A. No. 04 of 2025 the petitioner has prayed for return of the bank guarantees submitted by the petitioner on June 19, 2023. As regards, the petitioner is directed to take appropriate steps in accordance with law.

Let a copy of this order be forwarded to the learned Registrar at once for his discernment.

In view of above, the I.A. No. 03 of 2024 is hereby rejected on contest and accordingly, **disposed off**, but without any order as to costs.

Accordingly, fix the matter on **21.01.2026 from 03:00 p.m. to 03:45 p.m** for hearing of the application filed under Section 34 of the

Arbitration and Conciliation Act, 1996 by the petitioner. Parties are also directed to file written notes of argument in respect of Section 34 application positively, if the same has not been filed yet.

On **22.01.2026 from 03:15 p.m. to 03:45 p.m.** for hearing of the application filed under Section 34 of the said 1996 by the respondents.

On **30.01.2026 from 02:45 p.m. to 03:15 p.m.** for hearing on reply, if any.

Parties to act on the basis of the downloaded copy of this Order.

Dictated and corrected by me

Sd/-

Judge, Commercial Court at Alipore,
For South 24 Parganas, Purba Medinipur,
Paschim Medinipur&Jhargram

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For South 24 Parganas, PurbaMedinipur,
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