

Present: Sri Utpal Misra (JO Code: WB00659)
Judge, Commercial Court at Alipore
Misc Case (Arb) 10 of 2023
CNR no. WBSP18-000025-2023

Order No. 10
25.04.2023

In the matter of:

An application under
Section 36 of the
Arbitration and
Conciliation Act, 1996

And

In the matter of:

Durgapur Freight
Terminal private Limited.

Vs.

Titagarh Logistics
Infrastructure Private
Limited & 02 Others.

ORDER

Today the record is put up on the prayer of the Petitioner.

A separate application is also filed which has been registered as I.A. No. 02 of 2023 praying for extension of time to furnish the Bank Guarantee in terms of the Order dated 28th March, 2023 passed by this Court.

Seen the application being I.A. No. 02 of 2023.

Ld. Lawyer for the Petitioner submits before this Court that in terms of the Order dated 28th March, 2023 the Petitioner vide its Advocate issued a letter dated 6th April, 2023 to the Advocate for the Respondent,

inter alia, forwarding the cheque of Rs. 11 lacs towards payment due on 7th April, 2023. The Petitioner also requested for the Bank Account details of the Respondent so that the sum of Rs. 11,00,000/- could be remitted directly to such account from May, 2023 onwards. Copy of the said letter dated 6th April, 2023 along with a cheque bearing No. 00215 dated 06.04.2023 drawn on ICICI Bank, Kolkata favouring the Respondent is also filed. He has further submitted that subsequent to the aforesaid, the Petitioner duly held necessary talks with its banker with regard to furnishing the Bank Guarantee requiring in terms of Order dated 28th March, 2023. According to him, in view of several holidays in the months of April, 2023 and the person dealing with the matter in the organization of the Petitioner company being indisposed for a few days on account of ill health, as such talks could not be finalized prior to April 20,, 2023 when the Petitioner was requested to obtain a format of the Bank Guarantee to be furnished by it from the Respondent. Accordingly, the Petitioner instructed its Advocate to do the needful. By a letter dated April 21, 2023. Copy of the same has also been annexed with instant application. The Petitioner's Advocate on record duly requested the Advocate for the Respondent to provide such format. However, no response has been received to such letter till date.

In view of above circumstances, the Petitioner by way of filing the instant application has prayed for extension of time to furnish Bank Guarantee in terms of Order dated 28th March, 2023.

On the other hand, Ld. Lawyer for the Respondent vehemently opposed the prayer of the Petitioner for extension of time to furnish the Bank Guarantee as directed by this Court. He further submits that in the

aforesaid arbitration, an interim award dated 10th February, 2021 for Rs. 2,36,00,000/- was passed against the Petitioner along with post award interest @ 18% per annum. The Petitioner had assailed the aforesaid interim award by Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the said interim award and the same is pending for adjudication before this Court. Moreover, the Petitioner had also filed an application under Section 36 of the said Act praying for stay on the operation of the aforesaid interim award and by an Order dated 7th October, 2021 this Court was pleased to stay the operation of the said interim award subject to furnishing Bank Guarantee for a Rs. 1,75,00,000/- only. The aforesaid Order dated 7th October, 2021 was assailed by the Respondent before the Hon'ble High Court in C.O. No. 1969 of 2021, being an application under Article 226 of the Constitution of India. But the same was dismissed on contest by an Order dated 3rd December, 2021. But the Petitioner could not comply the said Order dated 7th October, 2021 and consequently, the Respondent filed an execution application against the Petitioner being Arbitration Execution Case no. 10/2021 before this Court and the same is pending. The instant application is nothing but to flout the Order of this Court, so he prays for rejection of the instant application filed by the Petitioner.

Upon hearing the submission as advanced by both sides and perusing the material on record, it appears that there was a conspicuous direction upon the Petitioner, which is as follows:

“Keeping in view of the rival contentions as well as discussions made in the foregoing paragraphs, 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 17th November, 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 weeks 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”.

So, I find no justification to allow any further extension of time for furnishing the Bank Guarantee as asked for by the Petitioner by filing this instant application today.

Hence, the application being I.A. No. 02 of 2023 is considered and rejected on contest, but without any order as to costs. Accordingly, the I.A. No. 02 of 2023 is disposed of.

To date i.e. 11.05.2023 at 11:00 a.m. for filing affidavits by both sides in respect of compliance of this Order and also for filing opposition by the Respondent to the *per se* application under Section 34 of the Act.

Both the parties are to act forthwith 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 Midnapore,
Paschim Midnapore & Jhargram

Sd/-

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