

**Present: Sri Utpal Misra (JO Code: WB00659)**  
**Judge, Commercial Court at Alipore**  
**Misc Case (Arb) 47 of 2022**  
**CNR no. WBSP18-000106-2022**

Order No. 14  
02.01.2024

**In the matter of:**

An application under  
Section 34 of the  
Arbitration and  
Conciliation Act, 1996

And

**In the matter of:**

The State of West Bengal.

Vs.

Makintosh Burn Limited.

**Appearance:**

Mr. Soumendra Roychowdhury,

Mr. Arindam Mondal

..... Ld. Advocates for the petitioner/state

Mr. Kausik Panja

..... Ld. Advocate for the opposite party/respondent.

**ORDER**

Today is fixed for hearing of the application under Section 36(2) of the Arbitration and Conciliation Act, 1996 being I.A. no. 02 of 2023.

Both sides file their respective haziras.

Petitioner files written note of argument. Let the same be taken on record.

Now, the record is taken up for hearing of the application being I.A. no. 02 of 2023.

Heard Ld. Lawyer for both sides.

**I.A. No. 02 of 2023**

1. This is an application for stay of operation of the arbitral award dated 25<sup>th</sup> March, 2022 (hereinafter referred to as the impugned award) passed by the Ld. Sole Arbitrator under Section 36(2) of the Arbitration and Conciliation Act, 1996 (for short the Act), which has been arisen from the instant Misc Case filed by the petitioner under Section 34 of the Act for setting aside of the impugned award.

2. The fact of the case is as follow. The instant matter pertains to arbitration between Mackintosh Burn Limited vs. The State of West Bengal arising out of Tender No. 02/CE-II of 2012-13, for reconstruction of Midnapore Anicut Structure on river Cossye under Anicut Section of Lachmapore (I) Sub-division under West Midnapore Division, Midnapore, Paschim Midnapore (Part A); Anicut Civil Works.

3. It is submitted by the petitioner that the respondent had raised several claims in its statement of claim, being claim numbers 1 to claim no. 6. The claim no. 1 further constituted of claim nos. 1a, 1B and 1C. The petitioner further states that the impugned award is *ex facie* bad, illegal, arbitrary and as such the same is not at all sustainable in law. As such, the petitioner is aggrieved by the impugned award and is interested in having the same set aside to the extent challenged. The petitioner submits that it has a good chance of success. Unless an order granting a stay on operation of the impugned award is passed, the petitioner shall be immensely prejudiced.

4. For the foregoing reason, Ld. Lawyer for the petitioner submits that it is necessary that an appropriate order be passed staying operation and/or further operation of the impugned arbitral award and restraining the respondent from enforcing and/or executing the arbitral award or from however giving effect to and/or further effect to and/or executing the same in as much as the petitioner would be harshly prejudiced should the respondent be permitted to execute the award/decreed pending the disposal of application under Section 34 of the Act for setting aside the award.

5. Ld. Lawyer for the petitioner also submits before this Court that the petitioner intends to deposit the principle amount of Rs. 4,64,38,894/- and as such prays for conditional stay of execution of the impugned award.

6. Ld. Lawyer for the opposite party/respondent vehemently opposes the submission as advanced by the Ld. Lawyer for the petitioner and submits before this Court that in absence of deposit of whole awarded sum, the petitioner is neither entitled to any order of stay of operation of the arbitral award nor the executing proceeding as initiated by the respondent in respect of the arbitral award can be stayed. It is further denied by the Ld. Lawyer that the balance of convenience lies in favour of the petitioner or that the petitioner will suffer irreparable loss, injury or prejudice.

7. 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 should be allowed on contest and the impugned Award dated 25<sup>th</sup> March, 2022 should be stayed during pendency of the application under section 34 of the Act.

8. Hence it is,

**Ordered**

that, the present application under section 36(2) of the Arbitration and Conciliation Act, 1996 is allowed on contest and the impugned Award dated 25<sup>th</sup> March, 2022 is hereby stayed during pendency of the application under section 34 of the Act subject to deposit of sum of Rs. 4,64,38,894/- by the petitioner in the form of renewable Bank Guarantee in favour of the respondent within six (06) weeks of the passing of this Order and the same is to be deposited before the Ld. Registrar, Civil Courts, District Judges' Court at Alipore.

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

Accordingly, the instant I.A. No. 02/2023 stands disposed of.

Let a copy of this order be communicated to the Ld. Registrar, Civil Courts, District Judges' Court at Alipore.

Fix the matter on 19.02.2024 at 11:00 a.m. for fixing dates of case management hearing of the instant Misc. Case pertaining to an application filed by the petitioner 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