

Present: Sri UtpalMisra (JO Code:WB00659)
Judge, Commercial Court at Alipore
Misc Case (Arb.)47/2022
Renumbered as Misc Arb (Com) 42 of 2022
CNR No. WBSP18-000106-2022

Order No. 20

Date: 05.07.2024

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.

Mackintosh Burn Ltd.

Order

Today is fixed for hearing of I.A. No. 04 of 2024.

Both sides file their respective haziras.

The instant application has been filed by the respondent/award holder of the instant application under Section 34 of the Arbitration and Conciliation Act, 1996.

The award debtor has not been filed any written objection against the instant application.

Seen the instant application being I.A. No. 04 of 2024.

Heard the Ld. Lawyer for the applicant as well as the Ld. Lawyer for the other side.

It is the contention of the applicant/award holder that the opposite party/State has initiated the instant application for setting aside a portion of the arbitral award dated 25.03.2022. In the said proceeding the opposite party had preferred an application under Section 36(2) of the Act of 1996, *inter alia*, with the prayer for stay of operation of the aforesaid award to the extent it has been challenged. The said application was contested by the applicant/respondent by filing its affidavit in opposition and after a contested hearing this Court vide Order dated 02.01.2024 was pleased to direct the opposite party to deposit a sum of Rs. 4,64,38,894/- in the form a renewable bank guarantee in favour of the respondent within 6 weeks of the passing of the order. Upon prayer for extension of the aforesaid time period by the opposite party/petitioner, this Court by order

dated 19.02.2024 was, inter alia, pleased to extend the aforesaid time period for furnishing the sum of Rs. 4,64,38,894/- by a further period of 4 weeks. Thereafter, the petitioner deposited the aforesaid sum in a form of renewable bank guarantee and the same was recorded in order dated 28.03.2024.

The further contention of the applicant is that the respondent is a Government of West Bengal Enterprise wherein the Government of West Bengal is having 51% share. The respondent states and submits that it has suffered huge financial losses in executing the subject work which also had adverse effect upon its contemporaneous and ongoing projects namely:

- (a) Saikat Sarani Project,
- (b) Gajoldoba Hub Bridge,
- (c) Construction of Himalayan Centre of Presidency University at Dowhil Kurseong, Dist of Darjeeling, and
- (d) West Bengal University of Health Science, Salt Lake.
- (e) Quarter for Officers and Staffs of Presidency and Alipur Central Correctional Home, Baruipur.

The applicant further states that amount directed to be deposited against the award is essentially the value of works done by the claimant. The respondent is enjoying the benefit of the works but in turn has challenged the award thereby not paying the sum and merely securing the same by a Bank Guarantee.

Therefore, the applicant prays for an order thereby enabling the applicant to withdraw the sum of Rs. 4,64,38,894/- so deposited by the opposite party herein in terms of the order dated 02.01.2024. The applicant also states that the applicant is ready and willing to furnish a fixed deposit of an equivalent sum before the Court in lieu of withdrawal of the aforesaid sum by encashment of the bank guarantee of Rs. 4,64,38,894/- so furnished by the opposite party. In the alternative the applicant is ready and willing to furnish bank guarantee of an equivalent sum towards security in lieu of withdrawal of the aforesaid sum by encashment of the bank guarantee of Rs. 4,64,38,894/- so furnished by the opposite party.

In support of the aforesaid contention, Ld. Lawyer for the application refers to two decisions *Damodar Valley Corporation vs. Reliance Infrastructure Ltd.* in connection with *A.P. No. 40 of 2020*, and *Union of India vs. Amitava Paul* reported in *2015 SCC Online Cal 872*.

Having heard the submissions of both sides, this court is of the view that the instant application should be allowed for the interest of justice.

Hence, it is

Ordered

that, the applicant is hereby permitted to withdraw the sum of Rs. 4,64,38,894/- by encashing the bank guarantee being no. 0013224BG0000008 so deposited by the opposite party pursuant to order dated 02.01.2024, in lieu of furnishing a fixed deposit of an equivalent sum or in the alternative by furnishing a renewable bank guarantee of an equal sum before the Ld. Registrar, Alipore till disposal of the proceeding under Section 34 of the Arbitration and Conciliation Act, 1996.

Accordingly, the instant application being I.A. No. 04 of 2024 is hereby disposed of on contest.

Let a copy of this order be communicated to the Ld. Registrar, Alipore.

Fix the matter on **03.09.2024 at 2:00 p.m.** for further order.

Parties to act on the basis of downloaded copy of this Order from the Website/E-courts App.

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