

Present: Smt. Suparna Ray (JO Code:WB00711)
Judge, Commercial Court at Alipore
Misc Execution (Com) 64 of 2024
CNR no. WBSP18-000127-2024

Order No. 06
20.11.2024

*In the matter of:
An application under
Order XXI Rule 11 read
with Section 151 of CPC,
1908.*

*And
In the matter of:
S.K. SAMANTA & CO.
PRIVATE LIMITED.*

*Vs.
DAMODAR VALLEY
CORPORATION.*

ORDERED

Today is fixed for hearing of the petition filed on behalf of the Award Holder/Petitioner on 04.10.2024 u/s 151 of CPC being registered as I. A No. 01/2024.

Hazira has filed on behalf of the Award Holder/Petitioner.

Ld. Advocate for the Award Holder/Petitioner is found present.

Record is taken up for hearing of the said application being I.A No. 01/2024.

Heard Ld. Advocate appearing on behalf of the Award Holder/Petitioner.

Perused the instant application and other materials on record.

In the instant application, it is submitted that the Award Holder/Petitioner has filed an application on 29.08.2024 u/s 36 of the Arbitration and Conciliation Act, 1996 read with Order XXI Rule 10 of the CPC for executing the award dated 21.08.2023 passed by Ld. Arbitral Tribunal. The Award Holder/Petitioner claimed a sum in excess of Rs.41,00,00,000/- in the instant proceeding from the Award Debtor. Award Debtor is yet to make

any payment in terms of the said award to the Award Holder/Petitioner. It is evident that the intention of the Award Debtor is to not make any payment, but to harass the Award Holder/Petitioner.

In the instant application it is further submitted by the Award Holder/Petitioner that the award was published on 21.08.2023 by Ld. Arbitral Tribunal and the instant application of the execution is made within two(02) years from the date of award. Hence, according to the provision of law enunciated under Order XXI Rule 22 of CPC, no notice is required to be served upon the Award Debtor by the Award Holder/Petitioner for executing the award. It is further submitted on or about 19.12.2023, the Award Debtor has filed an application u/s 34 of the Arbitration and Conciliation Act, 1996, for setting aside the said arbitral award dated 21.08.2023, being A.P (Com) No. 26/2023, before the Hon'ble High Court at Calcutta, with a prayer for condonation of delay of 24 days. The said application is misconceived and without any merit. In any event, the Award Debtor has not filed any application for stay of operation of the award as required u/s 36(2) read with section 36(3) of the Arbitration and Conciliation Act, 1996. Hence, there is no question of stay of operation of the said arbitral award. Accordingly, it is prayed that the Award Holder be permitted to move the execution application ex parte and also prays to pass ad interim ex parte order.

I carefully consider the submission of Ld. Advocate appearing on behalf of the petitioner/Award Holder. I carefully consider the the instant application and other materials on record.

Order XXI rule 22 of C.P.Code contemplates that a show cause notice should be issued where an application for execution is

made more than two years after the date of the decree. But in the present case the Award Holder has already filed requisites to issue notice upon the Award Debtor and the order of issuance of notice has already been passed. More so, from the averments of the instant application, filed by the Award Holder, it appears that the Award Debtor has already filed an application before the Hon'ble Calcutta High Court under section 34 of the Arbitration and Conciliation Act, 1996. However, no order or document has been filed on the record to show the present status of the said application before the Hon'ble Court .

In the facts and circumstances , I am not inclined to allow the prayer of the Award Holder in the present application.

Therefore, the application being I.A. no. 01 of 2024 is hereby dismissed and accordingly, disposed of.

Award holder is hereby directed to serve the notice as issued earlier upon the award debtor at once and file affidavit to such extent on the next date as fixed hereunder.

*Fix **05.12.2024 at 11:00 a.m.** for S/R and appearance of the award debtor and also for filing affidavit of service by the award holder.*

Award Holder is to file the documents showing the status of the case under section 34 of Arbitration and Conciliation Act ,1996, filed by the Award Debtor , as stated.

Parties to act on the basis of the downloaded copy of this order from Website /Ecourts 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*