

ORDER

OD - 42

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

IA NO. GA/1/2026

In EC/195/2022

INDUSTRIAL GROWTH ENTERPRISE PVT. LTD.

Vs

NATIONAL BUILDING CONSTRUCTION CORPORATION LTD.

BEFORE

HON'BLE JUSTICE GAURANG KANTH

Date: April 21, 2026.

Appearance:-

Mr. Soumabho Ghose, Adv.

Ms. Tiana Bhattacharyya, Adv.

...for award-holder.

Mr. Devajyoti Barman, Adv.

Ms. Sanjukta Basu Mallick, Adv.

...for award-debtor.

The Court:- This is an application filed by the award-holder seeking withdrawal of a sum of Rs. 82,73,418/-, deposited by the award-debtor in terms of the order passed by this Court on 15.05.2023.

The record reveals that an arbitral award dated 24.07.2015 was passed by the learned Arbitrator in favour of the award-holder. The said award is under challenge before this Court in AP/1724/2015 and remains pending adjudication. In the interregnum, the award-holder initiated execution proceedings for enforcement of the award.

By order dated 15.05.2023, this Court, while granting stay of the operation of the said award, directed the award-debtor to secure the awarded amount by depositing the entire sum before this Court, namely 50% by way of cash deposit and the balance 50% by way of a bank guarantee

with the Registrar, Original Side. Pursuant thereto, the award-debtor has deposited the aforesaid amount, which is presently lying in an interest-bearing fixed deposit with the Registry.

The present application has been filed by the award-holder seeking release of the said amount, subject to furnishing of an appropriate bank guarantee to the satisfaction of the Registrar, Original Side.

Learned counsel appearing for the award-holder has drawn the attention of this Court to the fact that AP/1724/2015 was dismissed for default on 04.08.2025. It is further submitted that the award-debtor has not been diligent in prosecuting the said proceedings, and on several occasions, their absence has been recorded by this Court.

Per contra, learned counsel for the respondent opposes the application and submits that there has been no change in circumstances warranting release of the deposited amount. It is contended that at the time of passing the order dated 15.05.2023, no liberty was granted for withdrawal of the amount, and in the absence of any supervening circumstance, the deposited sum ought not to be released. Reliance is placed on judicial precedents to contend that release of such amounts cannot be granted mechanically and must be premised upon demonstrable change in circumstances. It is further submitted that the only ground urged by the award holder, namely, lack of diligence on the part of the award debtor, is insufficient to justify such release. It is also pointed out that although the petition was dismissed for default on 04.08.2025, the same has since been restored by order dated 22.09.2025, thereby restoring the parties to their original position. Learned Counsel for the respondent placed reliance on the

Judgment of the Hon'ble Division Bench of this Court in ***State of West Bengal Vs Dilip Kumar Saha in APO 95/2021*** and ***Satyan construction Vs State of West Bengal in APO 77/2020***.

This Court has considered the rival submissions and the materials on record. It is not in dispute that the award in question is of the year 2015 and that the challenge thereto remains pending. It is also evident from the orders passed in AP/1724/2015 that the award-debtor had, on multiple occasions, failed to diligently prosecute the proceedings, which ultimately led to dismissal of the petition for default on 04.08.2025. Although the petition has since been restored, the prior conduct of the award-debtor cannot be entirely disregarded.

The reliance placed by the respondent on ***State of West Bengal v. Dilip Kumar Saha (supra)*** and ***Satyan Construction Vs State of West Bengal (supra)*** is misplaced and distinguishable on facts. In the said case, the Division Bench interfered with the order of withdrawal on the ground that the same had been granted in the absence of any demonstrated change in circumstances and without a proper consideration of the factual matrix. In the present case, however, this Court finds that relevant supervening circumstances do exist, particularly the conduct of the award-debtor in not diligently prosecuting the challenge proceedings, which had even resulted in dismissal for default at one stage. Accordingly, the said judgment does not advance the case of the respondent.

In the facts of the present case, this Court is of the considered view that the interests of justice would be adequately safeguarded by permitting withdrawal of the deposited amount, subject to appropriate security. Such a

course would balance the competing equities by enabling the award-holder to access the fruits of the award, while sufficiently protecting the interests of the award-debtor in the event the challenge succeeds.

Accordingly, the Registrar, Original Side, is directed to release the sum of Rs. 82,73,418/-, along with accrued interest, if any, in favour of the award-holder, upon the award-holder furnishing a bank guarantee of an equivalent amount to the satisfaction of the Registrar, Original Side.

The bank guarantee shall be kept alive and renewed from time to time until disposal of AP/1724/2015 or until further orders of this Court.

It is made clear that such release shall be subject to the final outcome of AP/1724/2015, and the award-holder shall abide by such further directions as may be passed in the said proceedings.

The application is, accordingly, allowed.

(GAURANG KANTH, J.)