



ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT 327 of 2024
WITH
AP-COM 281/2024
IA No.GA-COM/1/2024

SRMB SRIJAN LIMITED
VERSUS
GREAT EASTERN ENERGY CORPORATION LIMITED

Before:

The Hon'ble Justice I. P. MUKERJI

And

The Hon'ble Justice BISWAROOP CHOWDHURY

Date: 17th September, 2024

Appearance:

Mr. Jayanta Kumar Mitra, Senior Advocate
Mr. Sakya Sen, Advocate
Mr. Arnab Das, Advocate
Ms. Syeda Romana Sultan, Advocate
...for the Appellant

Mr. Ratnanko Banerji, Senior Advocate
Mr. Sarvapriya Mukherjee, Advocate
Mr. Konishk Kejriwal, Advocate
Mr. VVV Sastry, Advocate
Mr. Debargha Basu, Advocate
Mr. Debjyoti Saha, Advocate
...for the Respondent

The Court:- Order in terms of prayer (a) of the stay petition.

We formally admit the appeal.

Mr. Ratnanko Banerji, learned senior advocate appearing for the respondent/award-holder is absolutely right in his submission that in a challenge to a monetary arbitral award in a proceeding under section 34 of the Arbitration and Conciliation Act, 1996, the award-debtor is to secure the entire awarded amount.

This has been reiterated by the supreme court in the recent case of Toyo Engineering Corporation and Another vs. Indian Oil Corporation Limited, reported in 2021 SCC OnLine SC 3455.



Mr. Jayanta Kumar Mitra, learned senior advocate appearing for the appellant places some most important facts before us. They are as follows:

An application under Section 36 of the said Act was disposed of by a learned single judge of this court on 29th February, 2024 by directing the appellant to secure the entire awarded sum of Rs.70 crores.

In a special leave petition preferred against that order before the supreme court by the appellant, the Supreme Court by its order dated 26th April, 2024 had reduced the security to Rs.15 crores, that too, to be paid in two instalments of one for Rs. 7.50 crores before 24th May, 2024 and the other Rs.7.50 crores before 15th July, 2024. The court specifically stated that upon the said deposit being made by the appellant, there would be stay of execution of the award during the pendency of the section 34 application.

Thereafter, the section 34 application has been dismissed by a detailed judgment and order dated 5th September, 2024. This appeal has been preferred against such dismissal.

Mr. Banerji, learned senior advocate, argues that the remission of deposit granted by the Supreme Court was confined to the section 34 proceedings and could not be carried to the appeal.

We are unable to accept such contention.

The award-debtor is directed to provide security of the awarded amount to secure the sum pending challenge to the award. The challenge is commenced by a Section 34 proceedings. There is a right of appeal under Section 37. When such remedy of appeal is availed of, it is under the most general principles known to us, taken to be a continuation of the trial court proceedings. That security would hold good till disposal of the appeal, in our opinion.

If Mr. Banerji's client wants any alteration in that security, only the supreme court could do so. We are bound by its judgment dated 26th April, 2024.



However, we propose to hear out the appeal as expeditiously as possible dispensing with all formalities. 2025:CHC-OS:122-DB

As the respondent is represented by learned advocate, issuance and service of the notice of appeal are dispensed with.

Advocate-on-record for the appellant shall file an informal paper book in this Court by 6th November, 2024 serving a copy thereof upon the advocate-on-record for the respondent, at least seven days before the date of hearing of the appeal.

List the appeal for hearing on 13th November, 2024.

The stay application (IA No.GA-COM/1/2024) is disposed of.

The stay of execution of the award will continue till 16th December, 2024 or until further orders, whichever is earlier, so that there is pressure upon all of us to dispose of the appeal.

As affidavits were not invited, the allegations contained in the application are deemed not to be admitted.

(I. P. MUKERJI, J.)

(BISWAROOP CHOWDHURY, J.)