

OCD-2

AP-COM/961/2024  
IA NO: GA-COM/1/2025  
IN THE HIGH COURT AT CALCUTTA  
ORDINARY ORIGINAL CIVIL JURISDICTION  
COMMERCIAL DIVISION

DAMODAR VALLEY CORPORATION  
VS  
S K SAMANTA AND CO PRIVATE LIMITED

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date : 20<sup>th</sup> February, 2025.

*Appearance:*

*Mr. Deepak Agarwal, Adv.*

*Mr. Prasun Mukherjee, Adv.*

*. . .for the petitioner.*

*Mr. Jayanta Kumar Mitra, Sr. Adv.*

*Mr. Abhijit Chatterjee, Sr. Adv.*

*Mr. Dhirendranath Sharma, Sr. Adv.*

*Mr. Kaushik Sain, Adv.*

*Mr. Avijit Dey, Adv.*

*. . .for the applicant in GA-COM/ 1/2025.*

The Court: GA-COM 1 of 2025 is an application filed by the award-holder for leave/permission to withdraw Rs.21,91,69,672/- which was deposited by the award-debtor as cash security with the Registrar, Original Side of this Hon'ble Court in terms of the order dated January 8, 2025, passed in AP(COM)961 of 2024. The relevant portion of the order is quoted below:-

*“The Court : This is an application under Section 36(2) of the Arbitration and Conciliation Act, 1996 for stay of the award dated August 21, 2023 passed by the learned Arbitral Tribunal consisting of three Members. The award holder has put the award into execution before the learned Judge,*

*Commercial Court at Alipore and Misc Execution (Com) 64 of 2024, is pending.*

*Mr. Mookerjee, learned senior advocate, submits that as on date, the amount to be secured is Rs.43,83,39,344/- (approximately). This application is disposed of with the following direction :-*

*There shall be an unconditional stay of operation of the award for a period of four weeks from date. The petitioner will secure the sum of Rs.43,83,39,344/-. 50% of the said amount shall be secured in cash and the remaining 50% will be secured by way of bank guarantee, to the satisfaction of the learned Registrar, Original Side, High Court at Calcutta. The said bank guarantee shall be renewed from time to time. The cash deposit shall also be made before the learned Registrar, Original Side, High Court at Calcutta.*

*Upon compliance of this order, the interim order shall continue till the disposal of the application under Section 34 of the Arbitration and Conciliation Act, 1996. In case of default, the stay shall stand automatically vacated and the respondent/award holder may proceed with the execution case.”*

The Court is informed that the cash security was duly deposited. Intimation of such deposit was also sent to the award-holder. The award-holder has approached this Court with this application on the ground that, being a contractor engaged in several works which involves huge investment of both financial and infrastructural resources, the cash will enable the award holder to run its business smoothly. It has been further averred that, the Hon'ble Apex

Court as also this Court have under similar circumstances permitted withdrawal of such cash security upon the award-holder furnishing a counter bank guarantee of the same amount. This Court is of the view that the award-holder has satisfied the Court with regard to the need to enjoy the fruits of the award upon furnishing security to the Court. The application for setting aside the award is not likely to be disposed of soon and as such the prayer appears to be reasonable.

Under such circumstances, GA-COM 1 of 2025 is allowed, permitting the award-holder to withdraw the sum of Rs.21,91,69,672/- by furnishing counter guarantee of like amount, with the Registrar, Original Side, High Court at Calcutta in accordance with the usual procedure, to the satisfaction of the Registrar, Original Side.

The application being GA-COM 1 of 2025 is disposed of.

The merits of the application for setting aside the award, are not gone into at this stage.

(SHAMPA SARKAR, J.)

sp/