

OCD-6 & 7

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL DIVISION

IA NO. GA-COM/2/2024
In AP/899/2011

STATE OF WEST BENGAL
Vs
CAB ENGINEERING PRIVATE LIMITED

AND

IA NO. GA-COM/3/2024
In AP/899/2011

STATE OF WEST BENGAL
Vs
CAB ENGINEERING PRIVATE LIMITED

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR
Date : 12th November, 2024.

Appearance:

Mr. Sakya Sen, Adv.
Mr. Sabyasachi Sen, Adv.
. . .for the petitioner.

Mr. Anirban Ray, Ld. G.P.
Mr. Priyankar Saha, Adv.
Mr. Paritosh Sinha, Adv.
Ms. Srijani Mukherjee, Adv.
Mr. Arindam Mandal, Adv.
Mr. Aishik Chakraborty, Adv.
. . .for the State.

The Court: GA-COM 2 of 2024 is an application filed by the award holder for recalling and/or vacating the order passed by an Hon'ble Judge dated December 19, 2018. By the order, an unconditional stay of operation of the award dated November 16, 2010 as corrected on June 27, 2011 was passed in GA No.3265 of 2018. The GA was filed in connection with an application filed by

the award debtor, for setting aside the award being AP No.899 of 2011. The said application was filed under Section 36(2) of the Arbitration and Conciliation Act, 1996 (in short, the said Act) by the award debtor, i.e., the State of West Bengal. Upon considering the provisions contained under Section 36(3) of the Act of 1996, read with Rule (5) of Order XLI and Rules (8-A) and (8-B) of Order XXVII of the Code of Civil Procedure and in view of the orders passed by the Hon'ble Apex Court in some Special Leave Petitions, His Lordship granted unconditional stay of the arbitral award dated November 16, 2010 as corrected on June 27, 2011. Accordingly, the application under Section 36(2) of the said Act was disposed of.

The present application was filed in connection with AP No. 899 of 2011 on February 22, 2024. The award holder prays for an order vacating the unconditional stay granted by the order dated December 19, 2018 in the application under Section 36(2) of the said Act and for a liberty to proceed with execution of the award in EC No.595 of 2018. This application was first heard by a Coordinate Bench on March 28, 2024 and His Lordship was pleased to recall the order dated December 19, 2018, thereby directing the award debtor to deposit the principal amount by way of cash deposit with the Registrar, Original side. His Lordship directed that the stay would continue until further orders, but in default, the award holder would be at liberty to apply for variation and vacation of the order. His Lordship further directed that affidavits should be exchanged and the interest component must be calculated by the parties and furnished in Court.

Accordingly, affidavits have been filed. In the affidavit in opposition to GA –COM 2 of 2024, the award debtor raised various questions with regard to the

maintainability, jurisdiction of the Court to interfere with an order passed while disposing of the application for stay of the award, as also on the further ground that when a competent Court having jurisdiction had disposed of the matter on the law applicable at the relevant stage, subsequent reopening of the same question, upon the change of law as pronounced by the Hon'ble Apex Court, was not permissible. Mr. Sakya Sen learned Advocate submits that this Court has the determination to take up all matters arising out of the provisions of the Act, including Sections 34 and 36. Moreover, the application under Section 36(2) of the said Act was filed by the award debtor in connection with AP 899 of 2011, as a connected application. Thus the present application was rightly filed. It is next contended that the award was passed 11 years ago and due to the long pendency of the proceeding and the unconditional stay granted, the award debtor is unable to reap the benefit of the award and has to wait.

It is further submitted that on the first occasion, another learned Judge directed the award debtor to secure the principal sum, and kept the matter pending only for calculation of the interest component. The matter had reached a finality, but the interest payment was yet to be made.

GA-COM 3 of 2024 has been filed for direction upon the award debtor to deposit the sum calculated by the petitioner as the interest component up to September 23, 2024, that is, an amount of Rs.4,32,93,865/-. According to Mr. Sen, when the law is well settled that the entire sum awarded should be deposited in order to enjoy a stay of the award, the interest component has to be paid by the State. The State has also made its own calculation and had agreed to deposit the principal amount.

Mr. Anirban Roy Ld. Government Pleader submits that the order passed by this Court in GA 2 of 2024 would amount to review of an order passed by a competent Court. The subsequent change in law would not confer jurisdiction upon this Court to review an order of a erstwhile Judge, in view of Section 5 of the Arbitration and conciliation Act, 1996.

It is also submitted that although the order of the erstwhile Judge was complied with and the principal amount was deposited, the specific objection as to the maintainability of the application and the entertainability of the same has been raised in the affidavit-in-opposition.

Having considered the record and rival contentions of the parties, this Court finds that the application under Section 36(2) of the said Act, being GA 3265 of 2018, was filed in connection with AP 899 of 2011 and was disposed of. It is not in doubt that the applicable law was considered by His Lordship and the order was passed on the prevailing law.

The law underwent a change and the petitioners filed this application in AP/899/2011, praying for vacating the order passed in the GA. The prayer for payment of the interest component and the counter prayer of the State for modification of the order dated March 28, 2024 passed in GA 2 of 2024 on the points enumerated in the affidavit-in-opposition, including the issue of belated filing of the applications, shall be heard on 10th December, 2024 at 2 p.m.

(SHAMPA SARKAR, J.)