



OCD-13

ORDER SHEET

IA NO.GA/2/2023

IN

AP/808/2022

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE
(Commercial Division)

THE STATE OF WEST BENGAL AND ORS.
VS
M/S. B B M ENTERPRISE

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 9th August, 2023

Appearance:

Mr. Anirban Ray, Ld. GP

Mr. Priyankar Saha, Adv.

Mr. Arindam Mandal, Adv.

Mr. Paritosh Sinha, AoR, W.B.

Mr. Shourya Samanta, Adv.

Mr. Sakya Sen, Adv.

Ms. Nilanjana Adhya, Adv.

The Court: The judgment passed by this Court on 25th July, 2023 was modified to an extent upon mentioning of the matter by the award-holder. The judgment permitted the award-holder to withdraw Rs.9 crores upon furnishing of a bank guarantee of an equivalent amount with the Registrar, Original Side, among other issues. The award-holder was directed to furnish the bank guarantee before withdrawing the money from a reliable bank.



The judgment was modified by an order dated 28th July, 2023 at the instance of the award-holder whereby the award-holder was directed to furnish the bank guarantee of Rs.9 crores of the Punjab National Bank, Keyatala Branch to the Registrar, Original Side of this Court within three weeks from the date of the order. The Registrar, Original Side was thereafter directed to transfer Rs.9 crores electronically on the same date to the account of the award-holder. Particulars of the bank account and the code were mentioned in the order.

The award-holder has now come to the Court with a further difficulty in carrying out the directions in the order dated 28th July, 2023. The difficulty is that the Punjab National Bank, Keyatala Branch has expressed its inability to give a bank guarantee of Rs.9 crores since the award-debtor has about Rs.3.25 crores in its fixed deposit account. The Bank has, therefore, agreed to furnish three bank guarantees in three phases of Rs. 3 crores each.

The difficulty, as the Court understands from the submissions made on behalf of the award-holder, is that the award-holder does not have sufficient reserves in its bank account for the bank to furnish a bank guarantee of Rs.9 crores at one go. The bank will only furnish the bank guarantees of Rs.3 crores in three phases if the award-holder is able to replenish the reserves and take it to a limit of Rs.9 crores over a period of time. The bank may not be willing to furnish the bank guarantees upon exhaustion of the limit in the award-debtor's account until and unless Rs.3 crores come into the account in three phases.



The only concern of the Court is that the judgment of 25th July, 2023 followed by the order of 28th July, 2023 should be implementable and the award-holder should be in a position to take the benefit of the direction permitting the award-holder to withdraw the money lying with the Registrar, Original Side, upon furnishing a bank guarantee of an equivalent amount. If there are measures, indeed, to make the orders implementable, so be it.

GA/2/2023 is, accordingly, disposed of by allowing the applicant/award-holder to furnish a bank guarantee of the Punjab National Bank, Keyatala Branch for a total amount of Rs.9 crores in three phases of Rs.3 crores each.

The Registrar, Original Side is, accordingly, directed to transfer the corresponding sum of Rs.3 crores electronically to the bank account of the applicant on the same date of the applicant furnishing the bank guarantee of Rs.3 crores. The Registrar shall transfer the amounts to the bank account mentioned in prayer (b) of the application where the other particulars of the account are also mentioned.

(MOUSHUMI BHATTACHARYA, J.)