

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Arbitration Appeal No.13/2009

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Date of decision: 26th August, 2009

Punjab & Sind Bank

....Appellant

Through: Mr. Pallav Saxena, Advocate

Versus

Corus Infrastructure Pvt. Ltd.

... Respondent

Through: None.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | No |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

RAJIV SAHAI ENDLAW, J.

1. Appeal is preferred against order dated 8th May, 2009 of the Arbitrator directing the appellant bank to keep the sum of Rs. 5,18,92,578/- in a fixed deposit. This order was made on an application of the respondent under Section 17 of the Act for directions to the appellant bank to release the said monies to the respondent immediately.

2. Disputes and differences arose out of an agreement entered into by the appellant bank with the respondent for transferring of Non-Performing Asset of M/s Tensile Steel Ltd. In terms of the said agreement, the respondent deposited earnest money of Rs.10 lacs with the appellant bank and was to pay the balance sale consideration within 15 days. The respondent had a FDR of Rs.

5,18,92,578/- with the appellant bank and the respondent had also instructed the appellant to adjust the amount of the said FDR towards purchase money. The appellant bank claims to have adjusted the amount of the said FDR even prior to the expiration of 15 days, in terms of the instructions of the respondent. The respondent, however, did not pay the balance consideration within 15 days leading the appellant to terminate the agreement.

3. It is inter-alia the case of the respondent that even if it is the case of the appellant that it has rightfully terminated the agreement, the appellant in terms of the agreement was entitled to forfeit only Rs.10 lacs and the appellant is liable to refund the aforesaid Rs. 5,18,92,578/- to the respondent. Ad interim relief for release of this amount was sought.

4. The arbitrator instead of releasing the amount as claimed by the respondent has directed the appellant bank to keep the same in an FDR as was existing earlier in favour of the respondent and subject to final adjudication of the disputes.

5. The appeal came up first before this court on 3rd August, 2009 when it was felt by this court that the appellant ought not to have any grievance against the said order in as much as under the said order also the monies remain in the pocket of the appellant bank only. The counsel for the appellant had sought time to consider. In the circumstances, the concerned Manager of the appellant bank was also directed to be present in person.

6. Pursuant to the order dated 3rd August, 2009 Mr. H.S. Gujral, Senior Manager of the appellant bank is present. On inquiry he

states that the FDR was for the maturity amount of Rs.5,06,50,251.00 p. only. He further states that rate of interest on the said FDR would be of approximately 7% per annum.

7. The counsel for the appellant also informs that a third party has filed a writ petition before the High Court at Chandigarh impleading the appellant as well as the respondent herein as parties; it is informed that in the said writ petition such third party is claiming that the amount of the FDR belongs to it and is claiming direction for release thereof. It is urged that since now a third party also has raised claims with respect to the amount, if the amount is to be kept in the fixed deposit as directed by the arbitrator the same may create problems. Besides the said plea, it is reiterated that the direction of the arbitrator is creating accounting problems for the appellant bank inasmuch as appellant bank having already appropriated the said amount in the account of M/s. Tensile Steel Limited, cannot now keep the same in the FDR in the name of the respondent. The counsel for the appellant has also contended that the respondent had no prima facie case for the order impugned to be maintained.

8. As far as the prima facie case is concerned, as per the terms of the bid document, upon default by the respondent to deposit the further monies, the earnest money of the respondent alone was to be forfeited. The counsel for the appellant is unable to explain as to how the appellant could inspite of the said term of the contract forfeit any amount other than the earnest money which alone was agreed to be forfeited. Thus it cannot be said at this stage that the respondent did not have a prima facie case.

9. As far as the argument of accounting difficulty is concerned, if it is ultimately found that the appellant bank has wrongfully forfeited the amount of the FDR, merely because the appellant bank has appropriated the said amount, would not come in the way of the appellant bank being directed to refund the same. Similarly, at the interim stage also, the accounting difficulty even if any cannot defeat the order or call for interference by this court in appeal.

10. I do not consider that merely because the FDR, if made as directed by the arbitrator, would be in the name of the respondent would also create any difficulty. The interim order has no finality. The contention of the appellant bank of the monies thereof having been forfeited and the respondent having no right to the same shall remain alive and shall be for adjudication before the arbitrator. Thus merely because the said monies would be held in the name of the respondent would not create any rights in the respondent or in any third party with respect thereto.

11. As already observed in the order dated 3rd August, 2009, the order impugned appears to be in the interest of the appellant bank and it is surprising that the appellant bank is challenging the same. If the monies are kept in the FDR, the same even if held to be payable to the respondent in the final award, would be along with the interest accrued on the said FDR. Else the interest which may be awarded on the said monies if awarded to be refunded to the respondent may have been much higher.

12. The principle in appeals from the orders of the arbitral tribunal are the same as in appeals from the interim orders of the court. Merely because the appeal court may have exercised the discretion

otherwise is no ground for interfering with the order unless the same is perverse. No such perversity is found in the impugned order. The appellant being a bank, the respondent did not really need to secure the amount. However, the arbitrator appears to have been swayed by the factum of the appellant under the terms and conditions of the bid being entitled to forfeit only the earnest money. The money remains in the pocket of the appellant only whether as contended by the appellant or if kept in a fixed deposit as ordered by the arbitral tribunal. Needless to add that merely because the said fixed deposit would be in the name of the respondent would not give any additional rights to the respondent or to any other person therein.

13. I, therefore, do not find any merits in this appeal. The same is dismissed. However, nothing contained herein shall be deemed to be an expression on the merits of the respective claims.

IA No.9662/2009 (of the Appellant under Order 41 Rule 5 CPC)

On dismissal of this appeal, this application is infructuous and is disposed of.

**RAJIV SAHAI ENDLAW
(JUDGE)**

August 26th, 2009
J/PP