

GAHC010211992015



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case : I.A.(Civil)/2631/2022

M/S CALCOM CEMENT INDIA LIMITED
3RD AND 4TH FLOOR
ANIL PLAZA II
G.S. ROAD
GUWAHATI-781005
ASSAM.

VERSUS

M/S EASTWEST PROJECTS
A PARTNERSHIP FIRM BEARING REGISTRATION NO. RF/KAM/173/J/503 OF
2008
REPRESENTED BY ITS PARTNER MR. ASISH KEJRIWAL AND HAVING ITS
REGISTERED OFFICE AT S-8
G.S. TOWER
CHATRIBARI ROAD
GUWAHATI-781001.

Advocate for : C. SARMAH
Advocate for : DR. A SARAF appearing for M/S EASTWEST PROJECTS

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 09.02.2023

Heard Mr. J. Roy, learned senior counsel, assisted by Mr. B. Gogoi,

learned counsel for the applicant. Also heard Mr. A. Saraf, learned senior counsel, assisted by Mr. N.N. Dutta, learned counsel for the opposite party.

2. This interlocutory application has been filed by the applicant, who is the respondent in the connected Co.Pet. 5/2015, praying to allow the applicant to deposit a cheque for a sum of Rs.1,77,03,540.68 (Rupees one crore seventy seven lakh three thousand five hundred forty and paise six eight only) as per order dated 11.12.2019, passed in the said connected Co.Pet. 5/2015, with a further prayer that the proceeds of the cheque should not be released to the opposite party till final disposal of the connected appeal, i.e. Co.App. 1/2022.

3. Heard both sides on the prayer made in this application.

4. It would be relevant to quote paragraph 24 and 25 of the judgment and order dated 11.12.2019, passed in Co.Pet. 5/2015:

“24. However, having regard to the peculiar facts and circumstances of the case, more particularly the fact that there is an ongoing dispute between the DCBL and the BW Group pertaining to the implementation of share holders agreement, the respondent company is granted 60 (sixty) days’ time, with effect from the date of this order, to discharge its admitted debt by paying the amount of Rs.1,77,03,540.68 to the writ petitioner.

25. It is made clear that in the event of failure on the part of the respondent company to make full and final payment of Rs. 1,77,03,540.68 to the writ petitioner within the time frame provided by this Court, necessary order as per law shall be issued for advertising the petition.”

5. In view of above, this Court is of the considered opinion that if the prayer made in this interlocutory application is allowed, it would amount to review of the hereinbefore quoted paragraph 24 of the judgment and order dated 11.12.2019, passed in Co.Pet. 5/2015.

6. Accordingly, having noted that the period of time indicated in the said order to make the payment has already lapsed, the Court is of the considered opinion that the only option the applicant has is to comply with the aforesaid order dated 11.12.2019.

7. One of the prayer is not to release the proceeds of the cheque till disposal of the connected appeal. In the said regard, this Court having disposed of the connected Co.Pet. 5/2015 by judgment and order dated 11.12.2019, has no power to withhold the release of the amount till disposal of the appeal, which is exclusively within the domain of the appellate Court in seisin of Co.App. 1/2022.

8. The learned senior counsel for the applicant has submitted that he has brought a cheque payable to the Registry of this Court. In that regard, the Court is of the considered view that before the cheque is deposited in the Registry of this Court, the applicant is at liberty to be well advised as to whether it would be taking a risk of non-compliance of the paragraph-24 of the order referred above.

9. In view of above, the Court is inclined to dismiss this interlocutory application for the reasons as already indicated above.

JUDGE

Comparing Assistant