

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Ref (C) 2/2023

M/S WPIL LIMITED

...Petitioner(s)/appellant(s)

Through: None

Vs.

STATE OF J AND K AND OTHERS

...Respondent(s)

Through: Mr. Faheem Nisar Shah, GA

CORAM:

HON'BLE THE CHIEF JUSTICE

ORDER

24.11.2023

The present application has been listed on the basis of a letter written by the Arbitrator Smt. Gous-ul-Nisa Jeelani (retired District & Sessions Judge) who was appointed as Arbitrator in the arbitration application AA No. 09/2011 in case title M/s WPIL Limited V/s State of J&K whereby this Court had observed that the Arbitrator would be free to fix the fee to be borne by the parties in equal share.

It is the plea of the Arbitrator that in spite of completion of arbitration proceedings, which culminated in passing of the award, she has not been paid the outstanding arbitration fee except initial payment of Rs. 50,000/-.

Having regard to the prayer made in the application, I am of the view that if any amount has not been paid by the parties to the Arbitrator, the remedy would lie elsewhere other than this Court. In this regard, one may refer to Section 38 & 39 of the Arbitration and Conciliation Act, 1996 which provides as follows:-

38. Deposits.

(1) The arbitral tribunal may fix the amount of the deposit or supplementary deposit, as the case may be, as an advance for the costs referred to in sub-section (8) of section 31, which it expects will be incurred in respect of the claim submitted to it:

Provided that where, apart from the claim, a counter-claim has been submitted to the arbitral tribunal, it may fix separate amount of deposit for the claim and counter-claim.

(2) The deposit referred to in sub-section (1) shall be payable in equal shares by the parties:

Provided that where one party fails to pay his share of the deposit, the other party may pay that share:

Provided further that where the other party also does not pay the aforesaid share in respect of the claim or the counter-claim, the arbitral tribunal may suspend or terminate the arbitral proceedings in respect of such claim or counter-claim, as the case may be.

(3) Upon termination of the arbitral proceedings, the arbitral tribunal shall render an accounting to the parties of the deposits received and shall return any unexpended balance to the party or parties, as the case may be.

39. Lien on arbitral award and deposits as to costs.—

(1) Subject to the provisions of sub-section (2) and to any provision to the contrary in the arbitration agreement, the arbitral tribunal shall have a lien on the arbitral award for any unpaid costs of the arbitration.

(2) If in any case an arbitral tribunal refuses to deliver its award except on payment of the costs demanded by it, the Court may, on an application in this behalf, order that the arbitral tribunal shall deliver the arbitral award to the applicant on payment into Court by the applicant of the costs demanded, and shall, after such inquiry, if any, as it thinks fit, further order that out of the money so paid into Court there shall be paid to the arbitral tribunal by way of costs such sum as the Court may consider reasonable and that the balance of the money, if any, shall be refunded to the applicant.

(3) An application under sub-section (2) may be made by any party unless the fees demanded have been fixed by written agreement between him and the arbitral tribunal, and the arbitral tribunal shall be entitled to appear and be heard on any such application.

(4) The Court may make such orders as it thinks fit respecting the costs of the arbitration where any question arises respecting such costs and the arbitral award contains no sufficient provision concerning them.

Accordingly, the present application is closed with liberty to the Arbitrator to approach the appropriate forum and for recovering of the arbitration fee to be paid by the parties.

(N. KOTISWAR SINGH)
CHIEF JUSTICE

SRINAGAR
24.11.2023

Aamir