

GAHC010049022024



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

Case No. : I.A.(Civil)/765/2024

NUMALIGARH REFINERY LTD
A COMPANY INCORPORATED UNDER THE PROVISIONS OF THE
COMPANIES ACT, 1956 AND HAVING ITS REGISTERED OFFICE LOTUS
TOWER, GS ROAD, GUWAHATI 781032
REPRESENTED BY MR. KAJAL SAIKIA, CHIEF GENERAL MANAGER (HR
AND LEGAL) AGED ABOUT 54 YEARS

VERSUS

M/S K K ENTERPRISE,
A PROPRIETORSHIP FIRM HAVING ITS PRINCIPAL PLACE OF BUSINESS AT
26 A.T ROAD, BHARALUMUKH, NEAR SBI BHANGAGARH BRANCH,
GUWAHATI 781009, KAMRUP M ASSAM REPRESENTED BY ITS POWER OF
ATTORNEY AGENT SHRI PRNOB SARMAH, RESIDENT OF FLAT NO. A/3,
SNEHA NIWAS, S.R PATH, UZAN BAZAR, GUWAHATI 781001, DIST KAMRUP
M ASSAM

Advocate for the Petitioner : MR. S S ROY

Advocate for the Respondent : MR. B D DEKA

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

ORDER

Date : 24.04.2024

Heard Mr. J. Roy, learned Senior Counsel assisted by Mr. S. S. Roy, learned counsel for the applicant. Also heard Mr. B. D. Deka, learned counsel for the respondent.

2. This is an application under Order XLI Rule 5 of the Code of Civil Procedure, 1908 for stay of the operation of the arbitral award dated 03.10.2019, passed by the learned Sole Arbitrator, Hon'ble Justice Paran Kumar Phukan (Retd.), in Arbitration Petition No. 24/2017, and the judgment and order dated 29.09.2023, passed by the learned District Judge, Golaghat, in Misc. (Arbitration) Case No. 01/2020 as well as the further proceedings of Money Execution(Arb) Case No. 01/2020, pending before the Court of learned District judge, Golaghat.

3. It is submitted by Mr. J. Roy, learned Senior Counsel for the applicant, that the 100% of the awarded amount had already been paid and out of that 60% has already been withdrawn and remaining 40% of the awarded amount is yet to be withdrawn. He further submitted that the connected appeal has already been filed under Section 37(1)(a) of the Arbitration and Conciliation Act, 1996 against the judgment and award dated 29.09.2023, passed by the learned District Judge, Golaghat in Misc. (Arbitration) Case No. 01/2020, as the judgment and order passed by the learned District Judge suffers from patent illegality as it is based on reasoning which are unsubstantiated under the

contract between the parties and hence the same is in contravention to the fundamental Indian Policy of Law as envisaged under Section 37(1)(c) of the Act. It is further submitted by Mr. Roy, learned Senior Counsel, that the applicant is ready to furnish the bank draft/cheque in favour of the respondent for remaining 40% of the awarded amount and accordingly, prayed for stay of the further proceeding of Money Execution (Arb) Case No. 01/2020.

4. Mr. Deka, learned counsel for the respondent, submitted that he is ready to withdraw the 40% of the remaining awarded amount and raised no objection in staying the further proceeding of Money Execution (Arb) Case No. 01/2020 which is pending before the learned District Judge, Golaghat. However, he objected to the prayer made by the learned counsel for the applicant regarding submission of bank guarantee by the respondent before the learned District Judge, Golaghat.

5. Mr. J. Roy, learned Senior Counsel for the applicant, submitted in this regard that any solvent security can be furnished to the satisfaction of the learned Court below. However, he submitted that the solvent security may include the land with unclogged title which may be offered as security. In this context, he also relied on a decision of Hon'ble Bombay High Court passed in **Mahalaxmi Resorts & Ors. Vs. Abhay Gangadhar Pagdhare**, reported in **2022 SCC OnLine Bom 8717**, and emphasized on paragraph No. 7 of the said judgment, which reads as under:

"7. We dispose of the Interim Application by leaving it open to the appellants to place before the Registrar judicial-II such solvent security as they are able, including these very lands. This security will be to the satisfaction of the Registrar. We clarify this to

mean that the Registrar must be persuaded to record his satisfaction having applied his mind, and recording his reasons that there is clear, marketable and unclogged title to the lands being offered as security. We give the Appellants this further opportunity since Mr. Apte urges that the title to the sureties' land is indeed clear and marketable."

6. In this context, the learned counsel for the respondent further submitted that the solvent security may be movable or immovable property which should be to the satisfaction of the learned Court below before whom it may be furnished. He also relied on the decision of the Hon'ble Rajasthan High Court passed in **Civil Writ Petition No. 5744/2023 (Raj Kamal Cargo Movers Vs. The Assistant Commissioner, State Tax Department, Enforcement Wing & Ors.)** and further emphasized on paragraph No. 16 of the said judgment, which reads as under:

"16. The indication made that the bank guarantee needs to be taken from the petitioner by way of solvent security by itself is contradictory in as much as the term 'solvent security' essentially means that the person who is providing the security should not have been declared bankrupt by the court and he has to produce documents to indicate that he owns some movable/immovable property, which is equivalent to the amount for which the said security is being provided. The solvent security is that of a person who is entitled to/recipient of the amount. Whereas, the 'bank guarantee' is a guarantee given by the bank on behalf of the applicant to cover the payment obligation to a third party. As such, it cannot be said that the demand of bank guarantee by respondent no. 1 could be equated with providing solvent security in terms of the order passed under Section 54 (11) of the Act, 2017."

7. Considering the submissions made by the learned counsels for both sides, the execution of the arbitral award dated 03.10.2019, passed by the learned Sole Arbitrator, Hon'ble Justice Paran Kumar Phukan (Retd.), in Arbitration Petition No. 24/2017, and the judgment and order dated 29.09.2023, passed by the learned District Judge, Golaghat, in Misc. (Arbitration) Case No. 01/2020 as

well as the further proceedings of Money Execution(Arb) Case No. 01/2020, pending before the Court of learned District Judge, Golaghat, shall remain stayed till disposal of the connected arbitration appeal, being Arb. A. No. 01/2024, subject to the condition of payment of 40% of the remaining awarded amount. The applicant will accordingly furnish the bank drat/cheque for realization of 40% of the awarded amount and the respondent will be at liberty to withdraw the 40% of the awarded amount on condition of furnishing a solvent security to the satisfaction of the learned District Judge, Golaghat.

8. In terms of above, this Interlocutory Application stands disposed.

JUDGE

Comparing Assistant