IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION No. 446 OF 2017
IN
COMMERCIAL ARBITRATION PETITION No.408 OF 2017

Maharashtra Small Scale Industries Development Corporation Limited ...Applicant/Petitioner
Vs.
Mohit Minerals Pvt. Ltd. ...Respondent
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Mr. Shrihari Aney, Senior Counsel a/w. Mr. Anish Khandekar i/b. Kunal Bhanage for Applicant/ Original Petitioner
Mr. Sharan Jagtiani a/w. Mr. Yakshay Cheeda a/w. Ms. Pooja Tated a/w. Mr. Devashish Godbole i/b. ALMT Legal for Respondent
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CORAM : M.S. SANKLECHA, J.
WEDNESDAY, 22ND NOVEMBER, 2017

P.C.

1. This notice of motion has been taken out in an arbitration petition filed under section 34 of the Arbitration and Conciliation Act, 1996 (the Act). The petition challenges the Arbitral Award dated 20th April, 2017 passed by the Arbitral Tribunal under the Act. This motion seeks a stay of the arbitral award dated 20th April, 2017 pending the final disposal of the arbitration petition.

2. After having heard the parties, the petition under section 34 of the Act

has been admitted by a separate order passed today.

3. The impugned award dated 20th April, 2017 has while allowing the claim of the Respondent directed the petitioner to pay to the respondent the amount of Rs.15,00,00,000/- (being the bank guarantee executed), Rs.50,00,000/- (being return of security deposit) and Rs.6,59,13,752/- (being the interest awarded from 12th August, 2012 till the date of the impugned award).

4. Mr. Aney, learned Senior Counsel appearing for the Petitioner, on instructions, states that the petitioner as a condition of stay of the impugned award is ready to deposit Rs.15,00,00,000/- and Rs. 50,00,000/- in Court to secure the respondent, subject to the result of the petition. On the above deposit, it is submitted that there is no need to deposit the interest of Rs.6,19,13,752/- as of now.

5. So far as the deposit of interest is concerned, the petitioner has not prima facie shown as to the reasons why interest as directed is not payable. This is necessary for me to exercise my discretion to stay the award, without the deposit of the interest as directed by the impugned award. The petition has been admitted. The issues raised in the petition would require deeper

examination at the final hearing of the petition. It is not a case where ex-facie the impugned award or a part thereof is shown to be unsustainable in law. Nor is the impugned award or part thereof shown to be prima facie perverse which may warrant the exercise of discretion. Therefore, at this stage, there is no reason for the Petitioner not to honour the impugned award, which is a result of a consensus adjudication by arbitration. Thus at this stage, it would be the only fair that the stay of the impugned award is on the condition of depositing the amount as directed/ payable thereunder.

6. In the above view, there shall be a stay of the impugned award dated 20th April, 2017 subject to the following:

(a) The Petitioner /Applicant would in terms of the arbitral award dated 20th April, 2017 deposit in Court the amount of Rs.15,00,00,000/- (being the bank guarantee encashed) Rs.50,00,000/- (security deposit) and Rs.6,50,00,000/- (being part of interest awarded of Rs.6,59,13,752/-) within eight weeks from today;

(b) On the aforesaid deposit of Rs. 22 crores being made by the Petitioner, the Respondent would be entitled to withdraw it within a period of eight weeks from the date of communication to the Respondent of the deposit in this Court;

(c) However, the aforesaid withdrawal by the Respondent would be subject to it furnishing a bank guarantee of a nationalized bank for the aforesaid aggregate amount of Rs.22,00,00,000/- and undertakings of the Respondent and its Managing Director /CEO that in case the Petitioner succeeds at the final hearing of this petition, it would bring the aforesaid amount of Rs.22,00,00,000/- to this Court along with such interest as may be determined by the Court at the final hearing. Both the bank guarantee as well as the undertaking would be subject to the satisfaction of the Prothonotary and Senior Master of this Court.

(d) In case the Respondent does not exercise its option of withdrawing the aforesaid aggregate amount of Rs.22,00,00,000/- within the time stipulated above, the Registry is directed to invest the aforesaid amount in fixed deposit in a Nationalized Bank and keep it renewed till the final disposal of this petition. Needless to state this deposit for the benefit of the successful litigant in the pending petition.

Notice of motion is disposed of in the aforesaid terms. No order as to costs.

[M. S. SANKLECHA, J.]