

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**NOTICE OF MOTION NO.1995 OF 2017
IN
ARBITRATION PETITION NO.167 OF 2015**

Jackie Kakubhai Shroff	..	Applicant/Petitioner
Vs.		
Ratnam Sudesh Iyer	..	Respondent

Mr.Arif Bookwala, Senior Advocate a/w Mr.Shyam Diwani a/w Ms.Nivedita Kundaj a/w Mr.Chirag Chanani i/by M/s.Dewani Associates for the applicant/petitioner.

Mr.Rahul Narichania, Senior Advocate a/w Ms.Ankita Singhania a/w Mr.Vishal Gandhi a/w Ms.Jinal Mehta i/by M/s.Gandhi Associates for the respondent.

CORAM : R.D. DHANUKA, J.
DATE : 6th April 2018

P.C.:

1. By this notice of motion, the applicant seeks stay of the impugned award dated 10th November 2014. The arbitration petition is filed under Section 34 of the Arbitration and Conciliation Act, 1996 impugning award dated 10th November 2014 thereby holding that the respondent herein is entitled to the liquidated damages set out in the contract and directing the petitioner herein to return on or before 15th November 2014, the sum of US\$ 1.5 million received by the petitioner and further directing that if the said amount is not returned by 15th November 2014, the petitioner will pay interest @ 12% p.a. on the said amount from 16th November 2014 till payment or realisation.

2. The arbitration petition was admitted by this Court by an order dated 10th February 2015. When the arbitration petition was

admitted, there was an automatic stay of the impugned award in view of the judgment of the Supreme Court in the case of ***National Aluminium Co. Ltd. vs. Pressteel & Infrastructure (P) Ltd.*** -- (2004) 1 SCC 540.

3. The respondent had filed a petition under Section 9 of the Arbitration and Conciliation Act, 1996 against the petitioner inter alia praying for interim measures. After considering the documents and more particularly two e-mail sent by the wife of the petitioner to the respondent and others, this Court has prima facie observed that those letters sent by e-mail had to be interpreted harmoniously and the context in which those letters sent by e-mail by the wife of the petitioner had to be seen. This Court observed that in view of the fact that the deal between the transferor of shares and the purchaser was already signed prior to the said e-mail sent by the wife of the petitioner and in view of the fact that even after expiry of 15 months thereafter, no steps are taken by the respondent against the petitioner nor the said deal has been cancelled by the parties thereto no interim measure was warranted. The said order was upheld by the Division Bench in the appeal preferred by the respondent by an order dated 1st October 2013.

4. Mr.Bookwala, learned senior counsel for the applicant invited my attention to some of the paragraphs on the statement of claim filed by the respondent before the learned arbitrator and also some of the findings rendered by the learned arbitrator.

5. It is submitted that in so far as the issue no.1 that whether the claims for damages as prayed for in prayer clauses (a) to (c) fall within the scope of the arbitration agreement contained in the Deed of

Settlement dated 3rd January 2017 or not, the learned arbitrator has rejected the said claim for damages and for defamation and mental agony not maintainable on the ground that the contract had provided for liquidated damages.

6. Mr.Bookwala, learned senior counsel submits that the entire award is totally perverse and thus this Court has already admitted the petition. In view of the inconsistent finding rendered by the learned arbitrator, the petitioner shall not be asked to deposit any amount for grant of stay.

7. Mr.Narichania, learned senior counsel for the respondent, on the other hand, invited my attention to some of the findings rendered by the learned arbitrator in support of his submission that the learned arbitrator has categorically held that wife of the petitioner was acting as an agent of the petitioner and had addressed those defamatory e-mails to the respondent as well as third party as an agent of the petitioner and thus in view of the defamatory e-mails, the petitioner was liable to pay the damages as per the agreement entered into between the parties. He submits that this Court cannot re-appreciate the findings of facts rendered by the learned arbitrator.

8. A perusal of the award indicates that in paragraph 111 of the award, the learned arbitrator has observed that initially the learned arbitrator himself did not understand the case for damages in a sum of US\$ 3.5 million. He called upon the respondent to explain the said plea. During the course of the arguments, the respondent appears to have explained this plea before the learned arbitrator that claim of damages

made by the respondent was actually in the nature of the liquidated damages. No such issue was framed by the learned arbitrator. There was no pleading before the learned arbitrator on behalf of the respondent alleging that the claim for damages was not under Section 73 of the Contract and was in the nature of the liquidated damages. The award prima facie indicates that the respondent did not lead any evidence to prove damages and more particularly the liquidated damages.

9. Supreme Court and this Court in the catena of decisions has held that liquidated damages is also required to be proved.

10. In these circumstances, I am of the view that the petitioner has made out a case for unconditional stay without deposit. The petition is admitted in the year 2015 and directed to be heard expeditiously.

11. I therefore pass the following order :-

- (I) Notice of motion is made absolute in terms of prayer clause (a).
- (ii) The impugned award is stayed without depositing any amount.
- (iii) Hearing of the arbitration petition is expedited.
- (iv) There shall be no order as to costs.

R.D. DHANUKA, J.