

APO/44/2020
in
AP/567/2019
IA No: GA/1/2020 (Old No: GA/634/2020)
GA/2/2020 (Old No: GA/635/2020)

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

SREI EQUIPMENT FINANCE LIMITED.
Vs.
OVERTOP COMMOTRADE PVT. LTD.

BEFORE:
The Hon'ble JUSTICE SANJIB BANERJEE

The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA
Date : December 14, 2020.

Appearance:
Mr. Swatarup Banerjee, Adv.

The Court: The marginal delay in preferring the appeal is condoned in view of the good grounds shown.

The respondent is not represented despite apparent service. There appears to be little doubt that the respondent is dodging the matter, particularly, since the appellant claims that a sum in excess of Rs.5.36 crore has become due on account of unpaid instalments in terms of the agreement between the parties.

The appellant seeks a direction on the receiver to take possession of the plant and machinery and says that unless such plant and machinery are immediately sold, they would greatly depreciate in value and the appellant may be left with nothing to proceed against the appellant's claim.

It transpires that the arbitral reference has been commenced and, according to the appellant, the matter is at the evidence stage. In such view of

the matter, it is desirable that the authority of the arbitrator is invoked for any interim measure. Though the appellant claims that it is difficult to implement an order passed under Section 17 of the Arbitration and Conciliation Act, 1996, it appears to be the mandate of the legislature that, unless exceptional circumstances exist, the Court will yield to the authority of the arbitrator to pass appropriate orders by way of interim measures.

The appeal is disposed of without prejudice to the rights and contentions of the parties, particularly, in the pending reference. It will be open to the appellant to invoke the authority of the arbitrator under Section 17 of the said Act. The disposal of this petition should not stand in the way of the arbitral tribunal passing appropriate orders in accordance with law. APO/44/2020 along with GA/1/2020 (Old No: GA/634/2020) and GA/2/2020 (Old No: GA/635/2020) stand disposed of.

It is recorded that AP No. 567 of 2019 also stands disposed of.

The receiver appointed by the Single Bench will stand discharged after the expiry of two weeks from date. Such order will not impinge upon the authority of the arbitrator to appoint any commissioner or the like.

There will be no order as to costs.

(SANJIB BANERJEE, J.)

(HIRANMAY BHATTACHARYYA, J.)