

ORDER

APO No.73 of 2020
GA No.1101 of 2020
IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

SREI EQUIPMENT FINANCE PVT. LTD.
Versus
RANCHI MSW PVT. LTD. & ANR.

BEFORE:

The Hon'ble JUSTICE SOUMEN SEN

The Hon'ble JUSTICE SAUGATA BHATTACHARYYA

Date : 3rd September, 2020.

APPEARANCE:

Mr. Swatarup Banerjee, Advocate

Mr. Dripto Majumdar, Advocate

Mr. Saubhik Chowdhury, Advocate

...for the appellant/petitioner.

Mr. Prantik Garai, Advocate

...for Intervener / Ranchi Municipal Corporation.

In spite of notice, the respondents are not represented nor any accommodation is prayed for. The affidavit of service is kept on record.

By consent of the appearing parties, the appeal and the application are treated as on day's list.

There shall be an order in terms of prayer (a) of the application.

This appeal is directed against an order dated 1st July 2020 in connection with an application under Section 9 of the Arbitration and Conciliation Act, 1996. There is no dispute that the equipments are presently under the possession of Ranchi Municipal Corporation. It is contended on behalf of Ranchi Municipal

Corporation that these equipments are being used by Ranchi Municipal Corporation in terms of a prior agreement and accordingly, they have a right to use the equipments notwithstanding any default in payment under the hypothecation agreement. .

Mr. Prantik Garai, learned counsel appearing on behalf of Ranchi Municipal Corporation, has submitted that an application in the nature of pro interesse suo is pending before the Learned Single Judge where similar points have been urged. However, it is contended on behalf of Ranchi Municipal Corporation that they are willing to purchase the hypothecated assets at a consolidated price of Rs.4 crore.

Under the hypothecation agreement, in case of default, the appellant is entitled to possess the equipments in question. However, having regard to the fact that these machineries and/or equipments are presently being used by Ranchi Municipal Corporation and they are willing to purchase the said equipments at Rs.4 crore, we dispose of this appeal by directing Ranchi Municipal Corporation to deposit a sum of Rs.4 crore by bank draft in favour of the appellant within two weeks from date. In default, the Receiver already appointed shall take physical possession of the equipments in question. The Ranchi Municipal Corporation shall not alienate and/or dispose of any of the assets till the disposal of the application pending before the Learned

Single Judge. It would be open for the appellant to accept the payment of Rs.4 crore by Ranchi Municipal Corporation as the highest possible price that such machines can fetch and on that basis and in the event the appellant accepts the said position, the Trial Court may dispose of the matter by confirming the sale in favour of Ranchi Municipal Corporation at Rs. 4 crore. The judgment under appeal is, accordingly, set aside.

The appeal and the application are disposed of.

(SOUMEN SEN, J.)

(SAUGATA BHATTACHARYYA, J.)

S. Kumar