

ORDER

APO/101/2020
WITH
EC/157/2020
IA NO: GA/1/2020
IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

MACMET INDIA PRIVATE LIMITED
Versus
ADHUNIK POWER AND NATURAL RESOURCES LIMITED

BEFORE:

The Hon'ble JUSTICE SANJIB BANERJEE

The Hon'ble JUSTICE ARIJIT BANERJEE

Date : 14th October, 2020.

(VIA VIDEO CONFERENCE)

APPEARANCE:

Mr. S.N. Mookherjee, Sr. Advocate
Mr. Ranjan Bachawat, Sr. Advocate
Mr. Sayan Roy Chowdhury, Advocate
Mr. Arunabha Deb, Advocate
Mr. Faraz Sagar, Advocate
Mr. Tanmoy Chakravarty, Advocate
Ms. Ashika Daga, Advocate
Ms. Sara Sundaram, Advocate
...for the Appellant.
Mr. Siddhartha Mitra, Sr. Advocate
Mr. Domingo Gomes, Advocate
Mr. Sakabda Roy, Advocate
Ms. Trisha Mukherjee, Advocate
...for the Respondent.

The Court:- The appeal arises out of an order dated September 24, 2020, adjourning an application for execution of an arbitral award, though no stay of the operation of the award was granted on the prayer of the award-debtor under Section 36(2) of the Arbitration and Conciliation Act, 1996.

The arbitral award was rendered on March 23, 2020 and was served on the parties on June 8, 2020. There is no dispute that a petition for setting aside the

award under Section 34 of the Act was filed within the time permitted. In due course, the application for stay under Section 36(2) of the Act followed. The award-holder, in the meantime, applied for execution of the award since operation of the award had not been stayed.

Ordinarily, in accordance with the practice followed in this Court, the Arbitration Court is distinct from the Executing Court as execution business is taken up by the general Interlocutory Court on the Original Side. In such a scenario, the petition for setting aside the award and the application made therein for stay of the operation thereof would have appeared before a particular Single Bench and the application for execution of the award before another. However, given the restricted functioning of this Court in the present COVID times, the usual determination is not followed and Single Benches and Division Benches have been functioning with concurrent determination or, at any rate, the entirety of the Original Side determination pertaining to the Single Bench itself is assigned to one particular Bench on a given day. It was in such circumstances that the Arbitration Court and the Interlocutory Court were rolled into one and the petition for setting aside the award, the application for stay of operation thereof and the award-holder's application for execution, were taken up together by the Single Bench on September 24, 2020. Directions were issued for exchange of affidavits in the application for the stay of operation of the award as also in the execution application. No stay was expressly granted, but the execution application was also directed to appear on the adjourned date along with the application for stay of operation of the award.

The short question which arises in this appeal is whether, in the absence of the operation of an arbitral award being expressly stayed, the Executing Court

can decline to execute the award in view of the clear words used in Section 36(2) of the Act. However, the award-debtor has raised an objection as to the maintainability of the appeal. According to the award-debtor, since the matter may have to be regarded as a commercial matter covered by the Commercial Courts Act, 2015, the order impugned may not be appellable. The award-debtor says that, in any event, the order impugned is not appellable under Section 37 of the Act of 1996.

Apropos such objection, an interesting argument has been made on behalf of the appellant to the effect that the Act of 2015 does not deal with the execution of any award or decree and such Act operates only during the period that the disputes are adjudicated upon. The further submission on behalf of the appellant is that upon an arbitral award ripening to be executed, the execution proceedings are not covered by the Act of 1996 but are governed by the Code of Civil Procedure, 1908 and the provisions pertaining to execution contained therein. In such vein, it is contended by the appellant that the appeal in the present case would be maintainable under Clause 15 of the Letters Patent, since the constricted appellate provision in Section 13 of the Act of 2015 would not come into play in an arena where the Act of 2015 has not been extended.

The legal issue raised calls for an answer. However, there is a practical side to the matter. By now, the period of four weeks granted by the order of September 24, 2020 is drawing to a close. The award-debtor has offered that the matter be directed to appear before the Single Bench on October 20, 2020, for both the application for stay of the operation of the award and the application for execution to be considered on such date. In view of such offer, the interesting legal question raised may be left to be addressed another day.

APO 101 of 2020 along with the interim application therein are disposed of by directing the petition for setting aside the award, the application for the stay of operation of the award and the execution application to appear before the appropriate Single Bench on October 20, 2020. The Registrar (Listing) will ensure that all three matters appear in the list before the relevant Bench on the specified date. The prayer for stay of operation of the award will be taken up and the execution application considered thereafter, in the light of any order that may or may not be passed in the application for stay of the operation of the award.

It is made clear that the merits of the matter have not been gone into and only the issue of appellability has been noticed at any great length herein.

The time to file the affidavits-in-opposition to the award-debtor's petition and application before the Single Bench is extended till October 16, 2020. Copies of such affidavits must be made available to advocate for the award-debtor within working hours of October 16, 2020. Replies to such affidavits may be filed by October 20, 2020, before the matter is taken up. Similar directions are issued for filing affidavits in the execution application.

There will be no order as to costs.

Urgent certified photostat copies of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

(SANJIB BANERJEE, J.)

(ARIJIT BANERJEE, J.)