11-02-2021
Item no. 1
Subrata

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
(Commercial Division)

FMAT No.481 of 2020
Panchdeep Construction Limited
-vs-
National Projects Construction Corporation Limited
with
CAN No.1 of 2020

Mr. Haradhan Banerjee
Mr. Nilanjan Bhattacharjee
Mr. Arpan Guha ...for the appellant

Mr. Debajyoti Basu
Ms. Reshmi Mukherjee ...for the respondent

This is an appeal from a judgement and order dated 13th October 2020 passed by the learned Commercial Court at Alipore in an application under section 9 of the Arbitration and Conciliation Act, 1996, dismissing it.

The subject-matter of the dispute between the parties is a work contract. The respondent has terminated the contract. The appellant has invoked the arbitration clause and asserted that disputes have arisen under the contract which are referable to arbitration.

Under the terms of the contract, the appellant had furnished a bank guarantee for Rs.2.50 crore as a performance guarantee to the respondent. The respondent, in view of the alleged breach of contract on the part of the appellant, has already encashed the bank guarantee to the extent of Rs.1.36 crore.

Mr Banerjee, learned advocate appearing for the appellant, submits that the bank guarantee for the rest of the amount (Rs.2.50 crore – Rs.1.36 crore) should not be encashed by the respondent.

Mr Bose, learned advocate appearing for the respondent, opposes this prayer. He submits that the appellant has taken out multifarious proceedings in respect of the same cause of action. He further submits that a writ application (WPA No.6595 of 2020) filed by the appellant is pending where it was not favoured with any order by this court, and that proceedings have also been initiated by them before the Micro Small and Medium Enterprises (MSME) Council under the Government of India.

In our opinion, this is the regular civil remedy which the appellant has tried to avail of to vindicate its right under the contract. The respondent is at liberty to take appropriate steps before the other fora which the appellant has invoked.

In our opinion, the final rights and liabilities of the parties will be decided in arbitration. Invocation of a bank guarantee cannot be restrained by the court unless fraud or special equity is established by the appellant. They are unable to do so at this point of time.

In those circumstances, the respondent is given liberty to invoke the rest of the bank guarantee (Rs.2.50 crore – Rs.1.36 crore). However, it shall invest this amount in a term deposit with a nationalised bank earning the highest rate of interest, upon intimation to the appellant.

This appeal (FMAT No.481 of 2020) and the connected application (CAN No.1 of 2020) are accordingly disposed of, dispensing with all formalities.

[I.P. Mukerji, J]

[Subhasis Dasgupta, J]