

S/L 1
13.01.2021
Court. No. 19
GB

C.O. 1662 of 2020

M/s. Salzgitter Hydrolics Private Limited
Vs.
Eastern Coalfields Limited

(Through Video Conference)

*Mr. Arup Nath Bhattacharyya,
Mr. Hemanta Kumar Das,
Ms. Sreetama Biswas.*

...for the Petitioner.

*Mr. Shiv Shankar Banerjee,
Ms. Sanchita Barman Roy.*

...for the Opposite party.

The revisional application has been preferred by the respondent in a proceeding under Section 34 of the Arbitration and Conciliation Act, 1996, pending before the learned Judge, Commercial Court at Assansol, being Misc. (Arbitraion) Case No.25 of 2019.

The petitioner is aggrieved by the order dated December 15, 2020, by which the learned Commercial Judge allowed the show cause notice filed by the Eastern Coalfields Limited as to why a deposit of 75 per cent of the decretal amount or awarded amount need not be deposited in the proceeding before the learned Commercial Judge. The learned Judge was of the opinion that as the entire 100 per cent of the decretal amount was secured in terms of the order of the learned Civil Judge (Senior Division), Durgapur, passed in Misc. Execution Case No.36 of 2017, a further

direction for deposit of 75 per cent of the security deposit was not required under the law.

Mr. Bhattacharyya, learned advocate appearing on behalf of the petitioner submits that the order impugned is contrary to the provisions of Section 19 of the Micro, Small and Medium Enterprises Development Act, 2006, inasmuch as, the provision for deposit of 75 per cent of the awarded amount is a condition precedent to acceptance or regularization of any application under Section 34 of the Arbitration and Conciliation Act, 1996. He submits that the proviso to Section 19 and the provision of Section 24 clarify of the said provision had been inserted in the Act for the benefit of the small and medium enterprises which enables them to withdraw a portion of the amount for continuation of the business. He further submits that as the section started with a negative covenant, the learned Commercial Judge did not have any option but to dismiss the appeal for non-deposit of the amount as contemplated under the said Section.

Mr. Banerjee, learned advocate for the Eastern Coalfields Limited submits that when 100 per cent of the amount is already secured with the State Bank of India, Assansol, directing the opposite party to deposit another 75 per cent of the awarded amount before the learned court would amount to passing an order beyond the scope of the Act. The applicant before the Commercial Judge in the proceeding under Section 34 cannot be forced to deposit 175

per cent of the awarded amount. He further submits that the point raised in this application can well be raised by the petitioner even at the stage of appeal. This is an application under Article 227 of the Constitution of India wherein the High Court has a superintending power over all sub-ordinate courts and tribunals functioning quasi-judicial functions. In any event the learned Commercial Judge has already exercised his discretion and held that once the decretal amount is secured, further security of 75 per cent to be deposited in the court cannot be the intention of the legislature.

Under such circumstances, no interference is required in this application, save and except, the parties are given liberty to approach the learned Executing Court for an order of release of attachment of the bank account of the Eastern Coalfields Limited, with a further direction upon the State Bank of India, Assansol to transmit the entire decretal amount of Rs.1,09,18,434/- (Rupees one crore nine lakhs eighteen thousand four hundred thirty four) to the Court of the learned Judge, Commercial Court at Assansol to be deposited in the said court in accordance with law.

Such application to be made by both the parties before the learned erstwhile executing court within January 22, 2021 and upon transfer of the amount to the Court of the learned Judge, Commercial Court, the appeal will be heard in accordance with law and the learned Judge Commercial

Court shall be at liberty to pass such orders in the matter from time to time.

The revisional application is disposed of.

There will be, however, no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)