OD 16

ORDER SHEET

AP/80/2021

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

RAKESH KUMAR JINDAL AND ANR.
VERSUS
ASHOK KUMAR JINDAL AND 2 ORS.

BEFORE:
The Hon'ble JUSTICE DEBANGSU BASAK
Date: 5th March, 2021.

(Via Video Conference)

Appearance:
Mr. Utpal Bose, Sr. Adv.
Mr. Aniruddha Mitra, Adv.

Mr. Rupak Ghosh, Adv.
Mr. Ajit Kumar Chaubey, Adv.
Mr. Ayan Dutta, Adv.
Mr. Noorul Islam, Adv.
…for the respondent no.1

Mr. Sudip Deb, Adv.
Mrs. Laxmi Dalmiya, Adv.
Mr. Rajiv Ghosh, Adv.
…for the respondents nos.2 & 3

The Court: In this application under Section 9 of the Arbitration and Conciliation Act, 1996, post award, the petitioners seek directions with regard to the protection, preservation of an immovable property forming the subject matter of the arbitration

The parties to the proceedings were partners of a partnership firm. Disputes and difference arose between the parties with regard to such partnership firm. Such disputes and difference were referred to arbitration. Learned Arbitrator made and published the award dated December 23, 2019. The parties to the award filed application under Section 34 of the Arbitration and Conciliation Act, 1996 challenging the award.

The fact that the immovable property concerned is the subject matter of the arbitration is not disputed.

The shares of the parties in respect of such immovable property are not disputed.

The petitioners herein paid the corporation tax liability of the immovable property concerned by availing of the waiver scheme. In fact, the prayer in the present application is that the petitioners be permitted to avail of the waiver scheme of the Kolkata Municipal Corporation.

The waiver scheme of the Kolkata Municipal Corporation permitted a defaulter of corporation tax to pay defaulted amount without penalty and interest. Therefore, it cannot be said that the waiver scheme was not beneficial to the defaulter of corporation tax.

It is an admitted position that the immovable property concerned raked up a large corporation tax liability.

It is the contention of the two sets of respondents opposing the present application that the petitioners derived the benefits out of the immovable property concerned. The petitioners inducted tenants into the property at nominal value and reaped benefits out of such induction. Learned Arbitrator took note of such conduct of the petitioners and made observation with regard thereto in this award.

The Court is informed that the petitioners paid the entire corporation tax liability of Rs.44,42,123/- to the corporation within February 28, 2021 to avail of the benefits of the waiver scheme of the Kolkata Municipal Corporation.

The Court is informed the Receiver is in seisin of a sum of about Rs. 25 lakhs.

In such circumstances, it would be appropriate to direct the learned Receiver to disburse a sum of Rs. 20 lakhs out of the funds lying with him to the petitioners towards protanto satisfaction of the share of the claim of the petitioners on account of corporation tax liability of Rs. 44,42,123/-. The respondents will pay the corporation tax of Rs. 44,42,123/- in accordance with their declared share. The respondent will pay the shortfall to the petitioner if there be any. The petitioners are at liberty to execute the shortfall if not paid by the respondents within the period of four weeks from date.

On a prayer made on behalf of the appearing respondents, there will be a stay of this order for a period of four weeks from date.

AP 80 of 2021 is disposed of accordingly.

(DEBANGSU BASAK, J.)

B.Pal