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IA No.GA/1/2021
In
AP/189/2020

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

UNION OF INDIA
VERSUS
RAHEE ALLIED (JV) AND ORS.

BEFORE :

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 18th February, 2021

Appearance:

Mr. Rabindranath Bag, Adv.

Ms. Aparna Banerjee, Adv.

Mr. Samrat Sen, Sr. Adv.

Mr. Nirmalya Dasgupta, Adv.

Mr. R. L. Mitra, Adv.

Ms. Priyanka Dhar, Adv.

The Court : The instant application has been filed by the award-debtor for stay of operation of an award dated 23rd November, 2019. Learned counsel for the petitioner submits that the petitioner is ready to deposit the amount awarded to the respondent and that on depositing of such amount, the operation of the award should be stayed.

Learned senior counsel appearing for the respondent/award-holder places an order passed by a co-ordinate Bench in Swadha Builders Private Limited versus Nabarun Bhattacharjee:2021 SCC Online Cal 35, in which the learned Judge was of the view that for transferring an ordinary application to the Commercial Division, three criteria must be fulfilled. Counsel submits that the application filed under Section 34

of the Arbitration and Conciliation Act, 1996, should be transferred to the Commercial Division since the contract which is the subject-matter of the dispute is a construction and infrastructure contract which falls under Section 2(1)(c)(vi) of the Commercial Courts Act, 2015. Counsel submits that the decision relied upon fits squarely into the facts of the present case and that the dispute also comes within the specified value as defined in Sections 2(i) and 6 of the 2015 Act.

Upon hearing learned counsel appearing for the parties, this Court is of the view that the facts in the dispute between the parties are squarely covered by the Commercial Courts Act, particularly, Section 2(1)(c) and Section 2(i) read with Section 6 of the said Act. Since the application was filed in February 2021, the application is also not a pending case under Section 15 of the 2015 Act which can be transferred under the said Section before a Commercial Division of a Court. It is also evident that if an order is made for granting liberty to the petitioner to file the application afresh, the petitioner can take the benefit of Section 14 of the Limitation Act, 1963.

In view of the above, it is deemed fit that the instant application should be dismissed with liberty to file the application before the Commercial Division of this Court.

AP No.189 of 2020 along with GA No.1 of 2021 is accordingly, dismissed in view of the above without any order as to costs.

(MOUSHUMI BHATTACHARYA, J.)

bp.