ODC-1

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE
[COMMERCIAL DIVISION]

APOT/93/2021
WITH AP/239/2020
IA NO:GA/1/2021

SREI EQUIPMENT FINANCE LIMITED
VS.
ECOGREEN ENVIROTECH SOLUTIONS LIMITED AND ANR.
…………

BEFORE:
The Hon'ble JUSTICE I. P. MUKERJI
AND
The Hon'ble JUSTICE ANIRUDDHA ROY
Date : 9th July, 2021.
[VIA VIDEO CONFERENCE]

Mr. Satarup Banerjee, Adv…for appellant.

Mr. Utpal Bose, Sr. Adv.,
Ms. H. Chakraborty, Adv…for respondents.

The Court : This appeal from the judgment and order dated 11th June, 2021 made by a learned single judge of this court in an application under section 9 of the Arbitration and Conciliation Act, 1996 partly allowing the same, is formally admitted.

As the controversy involved is very short, we propose to hear out the appeal, after dispensing with all formalities.

There is a dispute whether the agreement in question has been terminated. Mr. Bose, learned senior advocate for the respondents contends that the termination purportedly made on 9th August, 2020 by the appellant was waived by them.

The fact remains that the respondents are using the subject equipments. Furthermore, from April to June, 2021 the hire charges have fallen due and remain unpaid. The monthly rental is about Rs.86 lakhs per month.

In the impugned judgment and order the learned judge has only restrained the respondents from transferring or otherwise dealing with the assets.

The disputes between the parties can be resolved before the learned arbitrator.

We are only concerned with a protective order pending such resolution of dispute. The impugned order, in our view, does not provide the required protection.

Considering the more or less admitted facts stated above, we think the ends of justice would be sub-served if the respondents are directed to pay the arrears from April to June at a rough rate of Rs.80 lakhs per month aggregating to Rs.2.40 crores in six equal monthly instalments of Rs.40 lakhs each, commencing from August, 2021 and payable by the 7th of each month. Furthermore, the respondents shall pay monthly user charges of the equipments at a rough rate of Rs.80 lakhs per month from July, 2021, payable by the 7th of the following month. Therefore, on and from August, 2021, by the 7th of the month the respondents shall pay Rs.40 lakhs [till the sum of Rs.2.40 crores is liquidated] together with Rs.80 lakhs aggregating to Rs.1.20 crores per month. All payments are without prejudice to the rights and contentions of the parties to the arbitrator.

We order accordingly.

We also appoint Mr. Kumar Gupta, Advocate, Bar Library Club, First Floor [M. 9830243523] and Mr. Rajarshi Rai Choudhury, Advocate, Bar Association, Room No. 2 [M. 9874879897] as joint Receivers at a monthly remuneration of 2000 GMs each per month to be paid by the appellant to take symbolic possession of the equipments. The respondents are permitted to continue to use the machinery under the joint Receivers, subject to the conditions below.

The respondents shall produce before the Joint Receivers, month to month receipts of payment made under this order to the appellant. In case of default, even partial beyond 15 days of the due date, the Joint Receivers shall not permit the respondents to use the equipments and shall take physical possession thereof and keep them in a place designated by the appellant, under the control of the Joint Receivers.

This is subject to the undertaking by the appellant to commence arbitral proceedings within a month from date. This order is subject to orders that may be passed in a subsequent application by the court or by the arbitral tribunal, which may include retention or removal of the Joint Receivers or altering their conditions of appointment.

The appeal and the connected application are disposed of accordingly.

(I. P. MUKERJI, J.)

(ANIRUDDHA ROY, J.)

pkd.