

IA No. GA 1 of 2021
APO No. 99 of 2021
with
AP No. 267 of 2021
IN THE HIGH COURT AT CALCUTTA
In appeal from its
ORDINARY ORIGINAL CIVIL JURISDICTION
CIVIL APPELLATE JURISDICTION
(Commercial Division)

Balasore Alloys Ltd.
Versus
Medima LLC

Before:
The Hon'ble Justice I. P. MUKERJI
And
The Hon'ble Justice ANIRUDDHA ROY
Date: 12th August 2021

Appearance:
Mr. Dhruba Ghosh, Sr. Advocate
Mr. Rishad Medora, Advocate
Mr. Meghajit Mukherjee, Advocate
Mr. Dibesh Dwivedi, Advocate
for the appellant

Mr. S. N. Mookherjee, Sr. Advocate
Mr. Shaunak Mitra, Advocate
Ms. Nandini Khaitan, Advocate
Ms. Shreya Singh, Advocate
Mr. Vishal Sinha, Advocate
for the respondent

The Court: As the point involved is very short, we have heard out the appeal today, dispensing with all formalities.

The contention raised by learned counsel for the parties before us can be analysed in this way.

Suppose on 3rd August 2021 the learned single judge had together with the maintainability issue also considered the question of grant of interim measure, the order would have been in two parts. The first part of the order would have held the application to be maintainable and the second part would have granted or refused to grant the interim measure prayed for. The order would be appealable. This is so because when the

question of interim measure is considered by the Court, the question of jurisdiction of the Court would necessarily be linked to it.

In this case, the question of maintainability has been decided by the order dated 3rd August 2021 leaving the question of grant or refusal to grant the interim measure to be decided at a later stage.

Now it is absolutely plain that under section 37 of the Arbitration and Conciliation Act, 1996 this kind of an order deciding the maintainability issue only is not appealable.

In those circumstances, Mr. Ghosh's client, the appellant, has to wait till the issue regarding grant of interim measure is also decided by the Court.

In that event, it would be open to the appellant, if aggrieved, to prefer an appeal, where all grounds including the ground relating to maintainability could be taken.

With the aforesaid observations, this appeal (APO 99 of 2021) and the connected application (IA No. GA 1 of 2021) are disposed of, reserving the above liberty to the appellant.

(I. P. MUKERJI, J.)

(ANIRUDDHA ROY, J.)