

IA No. GA 1 of 2021
APO No. 102 of 2021
with
AP No. 299 of 2021
IN THE HIGH COURT AT CALCUTTA
In appeal from its
ORDINARY ORIGINAL CIVIL JURISDICTION
CIVIL APPELLATE JURISDICTION
(Commercial Division)

Marg Ltd.
Versus
Srei Equipment Finance Ltd.

Before:
The Hon'ble Justice I. P. MUKERJI
And
The Hon'ble Justice ANIRUDDHA ROY
Date: 27th September 2021
(via Video Conference)

Appearance:
Mr. Rohit Das, Advocate
Mr. Kishwar Rahaman, Advocate
Mr. Indradip Das, Advocate
for the appellant

Mr. Swatarup Banerjee, Advocate
Mr. Saubhik Chowdhury, Advocate
Mr. Dripto Majumdar, Advocate
Mr. Ayushmita Sinha, Advocate
for the respondent

The Court: Order in terms of prayer (a) of the stay petition. At the same time we dispense with all the undertakings and propose to hear out the appeal.

It is an appeal from a judgment and order dated 26th July 2021 made by a learned single judge of this Court in an application under section 9 of the Arbitration and Conciliation Act, 1996. The application was made by the respondent/award-holder.

The arbitration award was made and published on 31st August 2020.

After the prescribed period for filing an application under section 34 of the said Act had elapsed, the respondent/award-holder made an execution application to enforce the award.

We are told that, before the executing court, the appellant/award-debtor took the point that the Covid-19 pandemic was continuing and that the Supreme Court order with regard to extension of the period of limitation in this period was in force. Therefore, time to file the section 34 application was still running.

Appreciating this submission the executing court disposed of that application without levying execution.

Thereafter, this application under section 9 of the said Act, was taken out by the respondent/award-holder. In this application an objection was taken by the appellant/award-debtor that the application was not maintainable on the ground that it sought sale of the appellant/award-debtor's shares in a company/companies to satisfy the award or part of it and that the scheme of section 9 did not permit this kind of an order. The specific objection seemed to be that an order under section 9 protected only property or goods which were the subject matter of the arbitration agreement. Since shares were not, they could not be sold.

The learned single judge got around this difficulty by relying on section 9(1)(e) of the said Act which laid down that "such other interim measure or protection as may appear to the Court to be just and convenient" could be made. The learned single judge opined that the Court had "discretion to make an order as it deems fit under the particular circumstances of the case before it".

We agree with the learned single judge. The opening words of section 9(1) make it explicit that a section 9 application is maintainable even after making of the award. Section 34 puts an embargo on the award-holder from enforcing the award till the entire period provided to the award-debtor to challenge the award elapses.

What would happen if in this intervening period the property out of which the award-holder contemplated realisation of the awarded sum

was disposed of or encumbered or would undergo depreciation in value?

It is here, in our opinion, that section 9 application(1)(e) could step in to provide protection to the award-holder.

Therefore, the application under section 9 was maintainable.

However, appreciating the submission made by Mr. Das that the shares were not the subject matter of the arbitration and that they should be spared from sale by the Receiver, by our interim orders dated 31st August 2021, 7th September 2021 and 20th September 2021 we had given opportunities to the appellant/award-debtor to convince us that the existing security provided by them with the respondent/award-holder would be sufficient to satisfy the award debt. Furthermore, we gave them an opportunity to provide some kind of an alternative security to secure the debt. Unfortunately, Mr. Das, learned advocate is unable to satisfy us.

On the basis of our observations above, the impugned judgment and order directing sale of the subject shares cannot be faulted. We see no reason to interfere with it.

In those circumstances, we affirm the same.

The appeal (APO 102 of 2021) and the connected stay application (IA No. GA 1 of 2021) are dismissed.

This order will not in any way affect the rights of either of the parties before the trial court.

No order as to costs.

(I. P. MUKERJI, J.)

(ANIRUDDHA ROY, J.)