



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.09.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE P.D.AUDIKESSAVALU

O.S.A.(CAD) Nos.40 and 41 of 2021

M.Pallonji Logistics Private Ltd.
Rep. by its Director,
No.44, Cawasji Patel Street,
Fort, Mumbai 400 001.

... Appellants in
both appeals

Vs

1. M/s.Poompohar Shipping Corporation Ltd.,
Rep. by its Managing Director,
Regd. Office at No.692, Anna Salai,
IV Floor, Nandanam, Chennai 600 035.
2. Tamil Nadu Power Finance and Infrastructure
Development Corporation Ltd.,
Tufidco - Powerfin Tower, 490/3-4,
Anna Salai, Nandanam, Chennai 600 035.
3. State Bank of India,
Overseas Branch, 86, Rajaji Salai,
Chennai 600 001.
4. State Bank of India,
Nandhanam Branch, EVR Periyar Maligai,
474, Anna Salai, Nandanam,
Chennai 600 035.
5. Indian Bank,
Nandanam Branch,
480, Anna Salai, Nandanam,
Chennai 600 035.

... Respondents in
both appeals

Appeals filed under Clause 15 of Letters Patent read with Order XXXVI Rule 9 of O.S. Rules and Section 37 of the Arbitration and Conciliation Act, 1996, against the common order dated 15.07.2021 passed in O.A.Nos.328 and 329 of 2021 on the file of original side of this court.



WEB COPY

For the Appellant : Mr.S.Vasudevan

For the Respondents : Mr.Rajendran Ragavan
for R-1

: Mr.G.Mohanakrishnan for R-2

: No appearance for RR 3 to 5

COMMON JUDGMENT

(Delivered by the Hon'ble Chief Justice)

It is submitted on behalf of the appellant that in terms of the order dated August 17, 2021, a sum in excess of Rs.19 crore has been deposited in no lien account with a nationalised bank by or on behalf of the first respondent.

2. The appeals are directed against a common order of July 15, 2021. The grievance of the appellant is that despite the Court noticing the first respondent's acknowledgment of liability in excess of Rs.19.71 crore and the virtual impecuniosity of the first respondent Government company, adequate security was not directed to be furnished.

3. It is the appellant's present request that since substantial security has been deposited, the appellant should be permitted to withdraw the same or a large part thereof to meet the immediate expenses of the appellant, particularly for the purpose of repairing a ship in China.

4. The primary consideration of a Court at the interim stage, particularly on a petition under Section 9 of the Arbitration and Conciliation Act, 1996, is to ensure that the claim of the claimant is protected. In this case, considering the apparent admission and the parlous state of the first respondent company, this Court was minded to enhance the quantum of security that was directed to be furnished by the arbitration court. The quantum of security now furnished appears to appropriately protect the appellant's interest.

5. It is an altogether different kettle of fish to allow the petitioner to appropriate all or any part of the deposit which has been made pursuant to an order for security to be furnished.

6. The ideal way in which this matter could have been concluded at this stage was to dispose of both the petition under Section 9 of the Act before the arbitration court and the present appeals by recording that the deposit has been made.



However, since no arbitrator has been appointed yet and the arbitral reference has not commenced, so to say, it is left open to the appellant herein to approach the arbitration court to obtain payment from the deposit that has already been made in terms of the previous orders. As of now, it does not appear to be appropriate, particularly in these appeals, to allow the appellant to withdraw any sum for whatever purpose that the appellant may need the same.

7. Since the first respondent has issued a letter to the appellant herein for reconciliation of accounts, it will be open to the parties to attempt reconciliation without prejudice to their rights and contentions in the pending proceedings.

8. O.S.A.(CAD) 40 of 2021 and O.S.A.(CAD) 41 of 2021 are disposed of. C.M.P.Nos.11433 and 11460 of 2021 are closed. There will be no order as to costs.

Sd/-
Deputy Registrar(J)

//True Copy//

Sub Assistant Registrar

tar

To

The Sub Assistant Registrar
Original Side, High Court,
Madras-104.

+lcc to Mr.S.Vasudevan, Advocate, S.R.No.44475

O.S.A. (CAD) Nos.40 and 41 of 2021

RR(CO)
CS/08/09/2021