

ODC 13 & 14

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL DIVISION

AP/514/2022

ECOGREEN ENVIROTECH SOLUTIONS LIMITED AND ANR
VS
SREI EQUIPMENT FINANCE LIMITED

AND

AP/397/2021

SREI EQUIPMENT FINANCE LIMITED
VS
ECOGREEN ENVIROTECH SOLUTION LIMITED AND ANR

BEFORE:

The Hon'ble JUSTICE SHEKHAR B. SARAF

Date: 19th July, 2022.

Appearance:

Mr. Utpal Bose, Sr. Adv.

Ms. Hashnunaha Chakraborty, Adv.

Ms. Neelina Chatterjee, Adv.

Mr. Suvodeep Chakraborty, Adv.

Mr. Swatarup Banerjee, Adv.

Mr. Paritosh Sinha, Adv.

Mr. Saubhik Choudhury, Adv.

Ms. Tapasi Bose, Adv.

1. The Court: There are two applications before this Court one being a Section 9 application filed by Ecogreen Envirotech Solution Limited (hereinafter referred to as the borrower) and a Section 11 application filed by Srei Equipment Finance Ltd. (hereinafter referred to as the financier).

2. At the very outset, both parties have referred to the order passed by the Division Bench dated 9th July, 2021 wherein directions were given for payment of arrear dues as well as payment of user charges by the borrower to the financier. Two joint Receivers had also been appointed and had been directed to take symbolic possession of the equipments. In default of payments to be made by the borrower, further direction had been given to the joint Receivers to take physical possession of the equipments. The above order was subject to an undertaking given by the appellant, that is the financier, to commence arbitral proceedings within a month from date.

3. The facts, that are not in dispute are that the arrear dues were paid by the borrower and user charges have also been paid till the month of March, 2022. Subsequent to the same, only a sum of Rs. 40 lakhs has been paid by the borrower to the financier.

4. With regard to the Section 11 application, it appears that the Section 21 (1) notice was not in terms of the agreement between the parties. The arbitral Tribunal was required to be of three members, one nominated by each of the parties. However, the arbitration notice under Section 21(1) instead of nominating a person, appointed a sole Arbitrator. In light of the same, the borrower refused to accept such an Arbitrator and subsequently, the Section 11 application was filed by the Financier. Affidavit directions were given by the Court in this matter and the same is pending. It is to be further noted that the Division Bench had made the order dated 9th July, 2021, subject to further orders that may be passed in a subsequent application by the Court or by the Arbitral Tribunal.

5. In this matter it is clear that a lot of water has already flowed under the bridge and payments have been made by the borrower in terms of the Division Bench order till the month of March, 2022. It is the contention of the borrower that excess payments have been made by them and the matter is required to be decided by the Arbitrator.

6. Keeping the balance of convenience and inconvenience in mind and for protection of both the parties, I am of the view that the matter be relegated to arbitration and this Court on consent of the parties should appoint an Arbitrator. Parties have agreed to leave the choice of the Arbitrator to be decided by this Court. Furthermore, they have also waived the procedure for having three members as part of the arbitral tribunal and agreed to appointment of a sole Arbitrator.

7. In light of the same, by consent of parties, Hon'ble Justice Asok Kumar Ganguly (retired) Supreme Court Judge is appointed as the Arbitrator to resolve the disputes between the parties. The appointment is subject to submission of declaration by the Arbitrator in terms of Section 12(1) in the form prescribed in the Sixth Schedule of the Act before the Registrar, Original Side of this Court within four weeks from today.

8. Let this order be conveyed to the Arbitrator by the Registrar, Original Side forthwith.

9. For protection of the financier in this matter, I am of the view that the borrower is required to deposit a sum of Rs.1.4 crores before the Registrar, Original Side, Calcutta within a period of ten days from date. I make it clear that parties shall be at liberty to move further applications before the learned

Arbitrator in accordance with law. The learned Arbitrator shall be at liberty to have the money withdrawn from the Registrar, Original Side and pay the same to either of the parties as decided by him. Furthermore, the Arbitrator on an application being made by the parties shall decide on the user charges to be paid by the borrower to the financier, if any.

10. With the above directions, AP 514 of 2022 and AP 397 of 2021 are disposed of.

11. I make it clear that upon payment of Rs. 1.4 crores within the time provided, the Receivers shall stay their hands in taking physical possession of the property and shall only act upon further orders passed by the learned Arbitrator.

12. Since the financier is in under CIRP proceedings, the learned Arbitrator is requested to fix his fees that would be reasonable and agreeable to both the parties.

(SHEKHAR B. SARAF, J.)

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