

15.06.2023
Court No. 19
Item no.10
CP

C.O. 3848 of 2022

M/s BESCO Limited
Vs.
M/s Hindcon Chemicals Pvt. Ltd.

Mr. Shidharta Banerjee
Mr. Rajib Mullick
Ms. Shreyashi Maity
Ms. S. Samaddar

.....for the petitioner.

Mr. Kaustav Chandra Das
Mr. Sk. Sahjahan Ali

....for the opposite party.

The petitioner is aggrieved by the order passed by the learned Registrar, City Civil Court, Calcutta, rejecting an application under Section 151 of the Code of Civil Procedure. By the order impugned, the prayer of the award debtor for setting aside the execution proceedings in Money Execution Case No. 812 of 2018, was rejected.

Mr. Banerjee, learned advocate appearing on behalf of the award debtor, submits that the learned Registrar ought to have appreciated that as the award was not supplied to the petitioner by the Micro and Small Enterprises Facilitation Council, the question of preferring an application for setting aside the award in terms of Section 19 of the Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as the 'M.S.M.E. Act'), would

not arise. Hence, when the award debtor did not have any opportunity to challenge the award as per the procedure of law, the question of execution would not come. The limitation with regard to filing of the application for setting aside the award had not started to run. Learned Advocate further submits that the arbitration proceedings were decided ex parte and the Council failed and neglected to supply the signed copy of the award. Hence, there was no occasion for the award debtor to file an application as per Section 19 of the M.S.M.E. Act and obtain a stay of the execution proceedings, in accordance with law.

Mr. Das, learned advocate appearing on behalf of the award holder, submits that the award was supplied to the petitioner by them sometime in 2011. That the petitioner was all along aware of the proceeding and of the award. The award holder is being harassed by such delay and prays that the execution case must be disposed of expeditiously. He further submits that with regard to supply of copy of the award, the West Bengal Micro and Small Enterprises Facilitation Council Rules, 2006 (hereinafter referred to as the said rules) would apply and the contention of Mr. Banerjee that limitation to file the application for setting aside the arbitration award would not start running until a copy of the award was served upon the petitioner by the Council,

was contrary to the said rules and the provisions of the M.S.M.E. Act.

Heard the learned advocates for the respective parties. It appears that Rule 12 of the said rules provides that the Council shall make an arbitral award in accordance with Section 31 of the Arbitration and Conciliation Act, 1996 and within the time specified in Sub-Section (5) of Section 18 of the Act. The award shall be stamped in accordance with the relevant law in force. Copies of the award shall be made available within seven days of filing of an application.

The issue raised by Mr. Banerjee is whether the Council was mandated to supply a copy to the award debtor or the said rules would apply. However, the factual issues which have come into light during the course of hearing indicate, that the award debtor was always aware of the award even if a copy was not supplied. It now appears that the award debtor has already applied for a copy of the award on March 9, 2023. It is submitted that the said copy has not yet been supplied.

This court is of the view that when the rules provide that the award should be supplied within seven days from filing of the application, a lot of time has already lapsed in between. The award holder is also facing unnecessary delay and harassment and is

not being able to recover the money which was awarded in its favour.

On the contrary, if the execution case proceeds the award debtor will not get a chance to test the correctness of the award.

Under such circumstances, it is expected that the Council shall supply the copy of the award to the petitioner, within a week from the date of communication of this order. The petitioner shall take all necessary steps to ensure that the application under Section 19 of the M.S.M.E. Act is filed, in accordance with law within two weeks from receipt thereof.

There will be an unconditional stay of the execution proceeding before the learned Registrar for a period of four weeks from date.

It is made clear that the application challenging the award shall be filed in compliance of Section 19 of the M.S.M.E. Act and failure to comply with the said provisions and/or to comply with the order of this court, will result in automatic vacation of the interim order passed by this court and the execution case shall proceed without further reference to this court.

The revisional application is accordingly disposed of.

There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)