

August 31, 2023
Sl. No.10
Court No.19
s.biswas

CO 4008 of 2022
with
CAN 1 of 2023

*West Bengal Industrial Infrastructure Development
Corporation*
vs.
New Alignment

Mr. Saptangshu Basu, Sr. Adv.
Mr. Amit Kr. Nag
Mr. Partha Banerjee

... for the petitioner

Mr. B. B. Sarkar
Ms. Iti Dutta
Ms. Priti Jain
Mr. Pratit Sarkar

... for the opposite party

The petitioner is the West Bengal Industrial Infrastructure Development Corporation, which is 'State' under Article 12 of the Constitution of India. This revisional application has been filed challenging the order dated December 5, 2022 passed by the learned Judge Commercial Court at Rajarhat, North 24 Parganas in Misc. (Arb) Case 15/2019 (CC).

After submissions were made regarding settlement, today the petitioner has raised an issue that the previous talks of settlement have become infructuous as the opposite party has changed its stand. The dispute continues. In the meantime, on the basis of the approach of the petitioner, some money has been paid to the award holder, which the award holder has allegedly encashed. By an order dated April 20, 2023, a Co-ordinate Bench of this

court recorded the submission of the learned advocate for the petitioner that a process of settlement was going on between the award holder and award debtor and there was every possibility that the issue would be resolved. On May 4, 2023, the submission of the parties were recorded. The learned advocate for the opposite party submitted that a part of the arbitral award was received on the basis of the settlement. Mr. Sarkar, learned advocate for the opposite party, submitted that his client had received a sum of Rs.1,21,62,235/- out of the awarded amount including the GST and cess. However, the Co-ordinate Bench recorded as follows:

“On last two occasions (i.e. on 20.04.2023 and 04.05.2023), similar submissions were made on behalf of the petitioner that the settlement is under process. However, fact remains that the same is not yet effected. Accordingly, if in the meantime the settlement is not reached, the matter will be heard.”

The interim orders in the matter were extended from time to time on the assurance of talks of settlement. Lastly, the matter came up before this court on August 2, 2023. This court had extended the interim order up to August 31, 2023. In view of part payment and talks of settlement, the award debtor was asked to bring a cheque or multiple

cheques totalling to Rs.1,31,19,514/-, in favour of the award holder. Such amount was the remaining amount to be paid by the petitioner in terms of the alleged settlement arrived at between the parties. The opposite party, however, submits that interest component had not been agreed upon and the letter indicating consent were forged.

Mr. Basu, learned senior advocate, submits that this amount cannot be secured as the settlement failed and the opposite party is retracting from the same, after accepting a part of the award.

Under such circumstances, there is no use in keeping the proceeding pending as it appears that my predecessors in office were making an endeavour to see that the settlements are done on the proposal of the petitioner.

Now, the petitioner submits that the issue as to whether the interest could be claimed by the award holder in view of settlement, cannot be decided by this court and the proceedings for setting aside the arbitral award are pending. It will be decided on merits.

Accordingly, this court does not find any reason to keep the revisional application pending or to interfere with the order impugned as the order impugned has been rightly passed, directing the award debtor to deposit the entire arbitral award of

Rs.2,12,13,080.60/- in default of which the execution proceedings would proceed.

It appears that the issue is no more res integra. Such issue was decided in the matters of **Pam Developments Private Limited vs. State of West Bengal** reported in (2019) 8 SCC 112, **Deep Industries Limited vs. Oil and Natural Gas Corporation Limited and another** reported in (2020) 15 SCC 706, **Radhey Shyam and another vs. Chhabi Nath and others** reported in (2015) 5 SCC 423.

The entire arbitral amount with interest is to be deposited by the award debtor, if a stay of execution is prayed for. However, as the part of the money has already been paid to the opposite party, the rest of the amount as directed by the learned executing court shall be secured.

The opposite party is at liberty take steps against the petitioner its men and agents, who allegedly forged their signature, in accordance with law.

This court has not decided the effect of the settlement between the parties.

The revisional application is thus disposed of.

With the disposal of the revisional application, the application being CAN 1 of 2023 is also disposed of.

All the parties are directed to act on the basis of the server copy of the order.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Shampa Sarkar, J.)