IN THE HIGH COURT AT CALCUTTA

Ordinary Original Civil Jurisdiction

Original Side

(Commercial Division)

Present :-

The Hon'ble Justice Moushumi Bhattacharya

AP 291 of 2021

Bridge Track and Tower Private Limited

Vs.

Simplex Infrastructures Limited

For the petitioner	:	Mr. Priyankar Saha, Adv. Mr. Aasish Choudhury, Adv. Ms. Uma Bagree, Adv. Mr. Tamoghna Saha, Adv.
For the respondent	:	Mr. Debraj Sahu, Adv. Ms. Antara Biswas, Adv.
Last Heard on	:	18.07.2023
Delivered on	:	19.07.2023

Moushumi Bhattacharya, J.

1. The petitioner before this Court has filed an application under section 9 as well as section 11 of The Arbitration and Conciliation Act, 1996 for interim relief and for appointment of an arbitrator, respectively.

2. By an order dated 4th August, 2021, the petitioner was granted interim relief on the finding, prima facie, that the petitioner has a *bona fide* claim against the respondent and that the respondent has not given any assurance that the petitioner's claim would be protected pending arbitration. The respondent was accordingly restrained from dealing with or disposing of its assets and properties or creating any third party rights on the property. The parties were directed to file their affidavits.

3. The respondent challenged the order passed at the ad-interim stage before the Division Bench. The appeal was dismissed on 8th November, 2021. The parties were directed to file their affidavits within a certain time frame and the First Court was directed to expedite the hearing of the matter.

4. Parties had mentioned the matter before this Court to get the matter listed in July, 2023. The order passed by this Court on 14th July, 2023 records that the only point now raised by the respondent is whether the petitioner should file separate applications for seeking interim relief under section 9 of the Act. This point has been taken after filing of affidavits as directed by this Court as well as by the Division Bench.

5. Learned counsel appearing for the respondent places the arbitration clauses in the purchase orders and submits that each of the 6 purchase orders has separate arbitration clauses and that each arbitration clause relates to that particular purchase order. Counsel does not deny the existence of the arbitration clauses but only says that the petitioner should file 6 separate applications under section 11 and 9 of the 1996 Act and not treat the 6 separate arbitration clauses as one arbitration agreement.

6. This argument is made at an extremely belated stage and after two years from the interim order passed by this Court on 4th August, 2021. Significantly, the Note filed by the respondent also does not address this point at all. Hence, this argument appears to be an afterthought.

7. In any event, the affidavit-in-reply of the petitioner clearly states that the respondent has paid Rs. 32 lacs as on 27th February, 2019 by way of a single cheque drawn on ICICI Bank dated 26th February, 2019. The petitioner has also stated in the affidavit-in-reply that the parties had clubbed the 6 purchase orders together and the respondent paid the petitioner in terms of the purchase orders in one shot.

8. There is no evidence on record to show that the respondent ever raised the point of 6 separate purchase orders which is now being raised before this Court. Having treated the 6 purchase orders as one and having clubbed all of them for making a onetime payment of Rs. 32 lacs, the respondent cannot now take the point of maintainability on the ground of each being a separate purchase order. The decision of Division Bench in *Ajoy Kumar Saha vs. Ashok Leyland Finance Ltd.; (2005) 1 CHN 572* was based on the specific finding that each of the 12 vehicles were governed by separate agreements and that joinder of cause of action was not permissible given the peculiarity of the case. The Division Bench also came to a finding that the Court must take into consideration the provisions of each of the agreement and the amount of actual default. The appellant was directed to file separate applications under section 9 of the Act in such view of the matter. The order does not record any act on the part of the respondent in

Ajoy kumar Saha treating the 12 agreements as one agreement which the respondent has done in the present case.

9. This Court hence finds no ground to entertain the preliminary objection taken on behalf of the respondent or to pass any orders on such objection. The petitioner now only seeks confirmation of the order passed by this Court on 4th August, 2021 and proposes to claim the balance payment of Rs. 80 lacs in the arbitration. The petitioner has already sought for appointment of an arbitrator in the application filed under section 11 of the Act which is also before this Court.

10. As stated above, the respondent's objection to the requirement of filing 6 separate applications for interim relief as well as for appointment of an arbitrator is wholly an afterthought. The respondent did not urge this point on 4th August, 2021 when the interim application was heard and considered by the Court or even in the notes submitted by it. This point has only been taken after affidavits when the parties are ready to go before the arbitrator for thrashing out their respective claims. The respondent's act of making payment of Rs. 32 lacs to the petitioner by way of a clubbed payment to the petitioner's demands under the 6 purchase orders also dilutes the objection.

11. There is also no evidence of any event subsequent to the interim order dated 4th August, 2021 which would amount to a change of circumstances. The respondent has also not shown any such event. The Court had dealt with the contesting factual submissions as well as the law on temporary injunctions and orders of attachment under Order 39 Rule 1 and 38 Rule 5

of the CPC, respectively, as well as section 9(1) of the 1996 Act. There is no reason to vacate, vary or modify the interim order of 4th August, 2021.

12. In view of the above, A.P. 291 of 2021 is disposed of by confirming the interim order dated 4th August, 2021 which restrained the respondent and its agents from dealing with or disposing of or encumbering any of the assets and properties or creating any third party rights in respect of the properties which form the subject matter of the disputes/arbitration agreements. The order will remain in force until further orders are passed by the arbitral tribunal which is to be constituted in the section11 application if such application succeeds.

Urgent photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfillment of the requisite formalities.

(**Moushumi Bhattacharya, J.**)