

ORDER SHEET

AP/336/2023

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE
(Commercial Division)

MANDIRA MITRA
Versus
POONAWALA FINCORP LIMITED

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 14th June, 2023.

Appearance:

Mr. Anubhav Sinha, Adv.

Mr. Rohit Mukherji, Adv.

Mr. Roshan Sengupta, Adv.

...for the petitioner

Mr. Rohit Banerjee, Adv.

Mr. K.K. Pandey, Adv.

...for the respondent

The Court: This is an application for stay of an Award passed by learned sole Arbitrator on 28th February, 2023. By the impugned Award, the petitioner, who was one of the respondents in the arbitration proceedings, was directed to pay a sum of approximately Rs.16.69 lakhs to the respondent who is before this Court.

The ground for seeking stay of the Award is that the making of the Award is vitiated by fraud/corruption.

Learned counsel appearing for the petitioner submits that the petitioner is not aware of the basis of the Award or the loan agreement which was referred to in the impugned Award. It is also submitted that the petitioner did

not participate in the proceedings after writing a letter to the Arbitrator objecting to the unilateral appointment of the Arbitrator.

Learned counsel appearing for the respondent/award-holder seeks to construe the second proviso to Section 36(3) of the Act.

The impugned Award indicates that the substance of the Award is a loan agreement dated 14.02.2019 between the parties. The first two paragraphs of the Award also record that the Arbitrator was appointed by the claimant (respondent before this Court) by way of a letter dated 24.08.2022. The petitioner's letter dated 08.09.2022 objecting to the appointment of the Arbitrator has also been referred to in the second paragraph of the Award. The third paragraph records that the petitioner did not participate in the arbitration despite service.

The content of the impugned Award shows, *prima facie*, that the appointment of the Arbitrator was unilaterally done by the respondent before this Court and further that the petitioner did not participate in the proceedings. The reason for the petitioner's non-participation may be gone into at a later stage.

The significant fact is that the Arbitrator was put on notice of the objection to her unilateral appointment but failed to deal with the same in the Award. The law with regard to unilateral appointment of Arbitrators as pronounced in *TRF Limited v. Energo Engineering Projects Ltd.* reported in (2017) 8 SCC 377, *Bharat Broadband Network Ltd. v. United Telecoms Ltd.* reported in (2019) 5 SCC 755 and *Perkins Eastman Architects DPC v. HSCC*

(India) Limited reported in (2020) 20 SCC 760 is well settled. The Arbitrator should at least have gone into that issue.

This Court is unable to agree with the contention made on behalf of the petitioner that unilateral appointment of the Arbitrator, which is purely a question of law, would form part of Clause (b) of the second proviso to Section 36(3) as the issue of unilateral appointment cannot be equated with making of an Award being induced or effected by fraud or corruption. However, Section 36(3) confers discretion on the Court to decide whether an Award should be stayed subject to the conditions of the later part of the sub-section.

Besides the above, the petitioner's letter of 8th September, 2022 raises other factual contentions with regard to the alleged loan agreement which should also have been dealt with in the Award. The petitioner has filed an application for setting aside of the Award which is also in today's list.

The above reasons are sufficient for the Court to hold that there should be a stay of the impugned Award dated 28th February, 2023 on the condition of the petitioner securing the amount of Rs.16,69,406/- by way of a bank guarantee which is to be furnished to the Registrar, Original Side of this Court within four weeks from date. The bank guarantee should be of reputed and reliable bank which is a constituent of the RBI.

AP/336/2023 is disposed of in terms of the above.

(MOUSHUMI BHATTACHARYA, J.)