

ORDER SHEET

AP/417/2023

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

TATA CAPITAL FINANCIAL SERVICES LIMITED
Versus
ABDUL GHANI RAHI AND ANR.

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 17th July, 2023.

Appearance:

Mr. Abhishek Guha, Adv.

Ms. Debarati Das, Adv.

Ms. Ritika Pal, Adv.

Ms. Akansha Chopra, Adv.

...for the petitioner

The Court: The respondents have been served but are not represented.

The petitioner seeks interim relief under Section 9 of the 1996 Act after constitution of an arbitral tribunal. The arbitral tribunal was constituted on 3rd June, 2022. The petitioner invoked the arbitration clause by way of a letter dated 19th May, 2022 and appointed an Arbitrator thereafter by way of a letter dated 3rd June, 2022.

Learned counsel appearing for the petitioner submits that this Court can entertain the application under Section 9 and pass interim relief for the grounds stated in paragraph 14 of the application which is essentially that the Arbitrator's orders for police help may not be given sufficient importance since

the respondents are influential persons in the concerned locality. Section 9(3) of the 1996 Act constitutes a bar on the Court entertaining any application filed under Section 9(1) after constitution of the arbitral tribunal subject to the Court being of the view that an application under Section 17 to the tribunal will not be an efficacious remedy. The statutory position was construed and some relaxation was given by the Supreme Court in *Arcelor Mittal Nippon Steel India Limited vs. Essar Bulk Terminal Limited* reported in (2022) 1 SCC 712, which made room for a Court to continue to entertain a Section 9 application provided the Court had applied its mind to the matter.

In the present case, there is no scope for the Court to apply its mind to the present application since this is the first time that the application has been brought to the board. Second, the grounds indicated in the application are no grounds at all to hold that any relief made under Section 17 would not be efficacious. The allegation that the respondents are influential persons in the locality is without substance since first it is an allegation without any supporting basis of its fact and second, the petitioner would have to first test whether an order passed by the tribunal will be frustrated or not before making a ground for relief thereon. There are other facts which also dissuade this Court from entertaining the present application.

The petitioner invoked the arbitration clause on 19th May, 2022 and proceeded to unilaterally appoint an Arbitrator on 3rd June, 2022. More than a year has passed since then and the petitioner should have ensured that the arbitration proceeds in the meantime and the parties have a forum to seek

urgent interim orders. Not having done so, the petitioner cannot come to the Court in June, 2023 for interim relief.

This Court hence finds no ground to entertain the matter once the arbitral tribunal has been constituted.

AP/417/2023 is accordingly dismissed. There shall be no order as to costs.

(MOUSHUMI BHATTACHARYA, J.)

bp.