

OCD-12

ORDER SHEET

AP/429/2023

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

TATA CONSULTANCY SERVICES LIMITED
Versus
FORUM PROJECT HOLDINGS PVT. LTD.

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 12th July, 2023.

Appearance:

Mr. Sabyasachi Chowdhury, Adv.

Mr. Suddhasatva Banerjee, Adv.

Mr. Subhojit Roy, Adv.

Mr. Aditya Sarkar, Adv.

Mr. Jishnu Chowdhury, Adv.

Mr. Soumabho Ghose, Adv.

Mr. Ritoban Sarkar, Adv.

Mr. S.K. Singhi, Adv.

Ms. Riti Basu, Adv.

Ms. Piyali Pan, Adv.

The Court: The petitioner before the Court was the respondent in an application filed under Section 11 of the 1996 Act for appointment of an Arbitrator. By an order dated 27th June, 2023, the application (filed by the respondent in the present proceedings) was disposed of by appointing an Arbitrator to resolve the disputes and differences between the parties. The petitioner in the present proceedings is a sub-lessee and the respondent is the

lessee of a premises, rights where to forms a dispute in the present application under Section 9 of the 1996 Act.

The petitioner seeks interim relief by way of a direction on the respondent to secure Rs.1,64,00,957.60 with the Registrar, Original Side of this Court in response to a letter issued by the respondent on 17th June, 2023 threatening to declare the petitioner as a trespasser in terms of Clause 5.14(a) of the Agreement dated 31st October, 2018.

Learned counsel appearing for the petitioner submits that although the Arbitral Tribunal has been constituted by the order dated 27th June, 2023, the arbitration is still to commence and there is a real apprehension that the respondent may act in terms of the letter referred to above. Counsel submits that the clause mentioned in the said letter would not apply in the present facts and the respondent cannot use the said clause to deal with or appropriate the security deposit of approximately Rs.1.64 crores.

Learned counsel appearing for the respondent places a letter communicating the order of appointment to the Arbitrator on 11th July, 2023. Counsel submits that the respondent has a right to appropriate Rs.1.64 crores under several clauses of the Agreement.

After hearing counsel appearing for the parties, this Court is of the view that once the Arbitral Tribunal has been constituted by the order dated 27th June, 2023, the powers of adjudication of the dispute should be shifted to the Tribunal and the Court should cease entertaining the matter unless the efficacy of Section 17 proceeding before the Tribunal is questionable and

subject to the pronouncement of the Supreme Court in *Arcelor Mittal Nippon Steel India Limited vs. Essar Bulk Terminal Limited* reported in (2022)1 SCC 712.

In the present case, this Court has not entertained the dispute in the present application and is also not willing to do so since the Arbitrator must decide on the rival contentions of the parties. However, the Court can pass appropriate orders to prevent the arbitral proceedings being commenced with efficacy and without prejudice to any party. This would certainly be the case if the respondent deals with the security deposit put in by the petitioner before the arbitration commences.

Therefore, the respondent shall put the amount of Rs.1,64,00,957.60 in a separate interest bearing fixed deposit account with the State Bank of India and maintain the said account until orders are passed in the arbitration proceedings. The amount as well as the interest will enure to the party who succeeds in obtaining orders in the arbitration. The contentious submissions made on interpretation of the relevant clauses in the Agreement is for the learned Arbitrator to consider and decide. This Court will not deal with those contentions.

The advocate-on-record of the respondent will maintain the receipts of the fixed deposits with copies to the advocate-on-record of the petitioner within three days from the day on which the receipts are received by the advocate-on-record of the respondent.

AP/429/2023 is disposed of in terms of the above.

The respondent is given leave to act on this order within two weeks from date, as prayed for.

(MOUSHUMI BHATTACHARYA, J.)

sg.