IN THE HIGH COURT AT CALCUTTA

Ordinary Original Civil Jurisdiction

Original Side

(Commercial Division)

Present :-

The Hon'ble Justice Moushumi Bhattacharya

AP 457 of 2023

National Jute Manufactures Corporation Limited

Vs.

Saurabh Muklania

For the petitioner	:	Mr. Jishnu Chowdhury, Adv. Mr. Sarvapriya Mukherjee, Adv. Mr. Aritra Basu, Adv. Mr. Debabrata Das, Adv. Mr. Saptarshi Mukherjee, Adv.
For the respondent	:	Mr. Anuj Singh, Adv. Mr. Srinjoy Bhattacharya, Adv.
Last Heard on	:	19.07.2023
Delivered on	:	20.07.2023

Moushumi Bhattacharya, J.

1. This is an application of the award-debtor for an opportunity to secure the balance sum of 25% of the awarded amount and for modification of an order passed by this Court on 26th June, 2023. The award-debtor has also sought for stay of the award dated 28th December, 2021.

2. Since the award-debtor has also asked for a modification of the order passed by this Court on 26th June, 2023, that order is required to be referred to at the very outset.

3. The order dated 26th June, 2023 was passed in the execution petition of the award-holder being EC/22/2023. The award-debtor sought further time to furnish 25% of the awarded amount by way of a bank guarantee to the Registrar, Original Side of this Court. The order contains a detailed narration of the sequence of events from the very first order passed by a Co-ordinate Bench on 31st January, 2023 in an application filed for stay of the award till the second order of the Division Bench dated 4th May, 2023 by which the award-debtor's prayer for extension of time to put in the balance 25% was rejected. The Court considered the facts as well as the law on stay and setting aside of awards under the 1996 Act to hold that the award-debtor's prayer for extension of time to file the balance 25% of the awarded amount cannot be entertained. The Court accordingly directed the award-holder to pay the remaining balance 25% of the awarded amount to the award-holder within two weeks from the date of the order.

4. The award-debtor has not complied with the direction and has instead filed the present application for modification of the order and for a further opportunity to the award-debtor to secure the balance 25% of the awarded amount. The application, in essence, is a rolled-action of review of the order passed by this Court on 26th June, 2023. The only improvement in the factual position which the award-debtor seeks to bring before this Court is that the award-debtor is now willing to allow the award-holder to withdraw 100% of the security to be provided by the award-debtor subject to stay of the impugned award.

5. Learned counsel appearing for the award-holder is not willing to agree to the proposal for withdrawal of the entirety of the awarded amount. Counsel seeks the implementation of the direction passed by the Court in the order dated 26th June, 2023 itself that the award-debtor should pay 25% of the awarded amount to the award-holder.

6. Even apart from the position taken by learned counsel appearing for the parties, this Court is of the view that having considered the factual position in details in the order dated 26th June, 2023, there is no further scope or basis to allow any further opportunity to make good what the award-debtor repeatedly failed to do from 31st January, 2023 to 4th May, 2023. The facts narrated in the order dated 26th June, 2023 may be referred to in this context. It is sufficient to say that the award-debtor filed at least three applications, including an application for extension before the learned Single Judge, an appeal before the Division Bench and for another extension before the Division Bench for

complying with the first order dated 31st January, 2023. By the first order, the award-debtor had been directed to secure 75% of the awarded amount by way of a cash deposit and the balance 25% by way of bank guarantee. The numerous proceedings filed by the award-debtor to seek extension to comply with this direction both before the single as well as Division Benches and challenge to the order of the first Court in between, was one of the reasons for this Court to reject the prayer of the award-debtor and direct the award-debtor to pay 25% of the awarded amount to the award-holder.

7. There is no subsequent fact brought to the Court from 26th June, 2023 which would persuade the Court to change its views as expressed in the order dated 26th June, 2023. In fact, there are no changed circumstances even after 31st January, 2023 which was the first order whereby the award-debtor was directed to secure the awarded amount in the manner stated in the said order. The award-debtor has since secured 75% of the amount not by way of a cash deposit but by way of bank guarantee but continues to haggle at least by way of time on the remaining 25%.

8. Apart from facts and the statutory position for stay of an award under Section 36(2), the finding of the Court with regard to disposal of the application for stay filed by the award-debtor remains unchanged.

9. The application for stay of the impugned award was disposed of by a learned Single Judge of this Court on 31st January, 2023. This would be evident from the order itself. The award-debtor, however, continued to try its luck by

seeking extension of time to comply with the directions. The award-debtor did not meet with any success except the second order of 15th March, 2023 allowing extension of time to comply with the direction. The award-debtor, however, failed to do so even after extension of ttime.

10. The finding of this Court with regard to the requirement of an application being alive and pending before the Court is relevant to an application for stay of an award under Section 36(2) and for imposition of condition. This finding cannot be construed by the award-holder to mean that the award-debtor has leave to take out a fourth application for extension of time to put in the balance amount by way of a bank guarantee. That chance was exhausted on 31st January, 2023 itself. Even if the application is taken as a review of the order dated 26th June, 2023, there are no grounds brought to the Court which would persuade this Court to view the factual context of the order dated 26th June, 2023 in a new and important light. There is also no error apparent on the face of the order and this Court is of the view that there is no other sufficient cause for the Court to entertain the application.

11. AP/457/2023 is accordingly dismissed. Since the time directed in the order for payment of 25% of the balance amount to the award-holder has already expired on 10th July, 2023, the award-debtor shall comply with the order within 28th July, 2023.

12. This is also the fourth attempt of the award-debtor to needlessly drag the award-holder to the Court on one frivolous pretext or the other. The award-

debtor shall hence pay costs of Rs.20,000/- to the award-holder within 28th July, 2023.

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

T.O.
A.R.(C.R.)

(**Moushumi Bhattacharya, J.**)