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

Present :-
The Hon'ble Justice Moushumi Bhattacharya

AP 521 of 2023

M/s. Cosmic Ferro Alloys Limited

vs.

M/s. Cosmic CRF Limited

For the Petitioner	:	Mr. Priyankar Saha, Adv. Mr. Kalyan Bhaumik, Adv. Ms. Sampa Mitra, Adv. Ms. Ankana Basu, Adv.
For the Respondent	:	Mr. Anirban Ray, Adv. Mr. Pranit Bag, Adv. Ms. Patrali Ganguly, Adv. Ms. Joyshree Ghosh, Adv.
Last Heard on	:	10.08.2023
Delivered on	:	11.08.2023

Moushumi Bhattacharya, J.

1. The petitioner seeks interim relief in the form of an injunction restraining the respondent from operating two Bank accounts mentioned with ICICI Bank Limited and Kotak Mahindra Bank without leaving aside an amount of Rs. 10,33,34,340/-. The particulars of the Bank accounts are mentioned in prayer (b) of the application.

2. The petitioner relies on Business Transfer Agreement (BTA) dated 19th January, 2022 between the petitioner and the respondent by which the respondent was to pay Rs. 49 crores to the petitioner in exchange of the petitioner's transferring assets of the business in question. The petitioner has been described as the "Seller" and the respondent as the "Purchaser" in the said agreement. Learned counsel appearing for the petitioner says that of the Rs. 49 crores, Rs. 10 crores are outstanding from the respondent as on date. Counsel relies on a statement in paragraph 21 of the application which contains the particulars of the balance due of approximately Rs. 10.33 crores.

3. Counsel places three Addenda to the BTA of 29th January, 2022, 16th May, 2022 and 25th August, 2022 essentially for clarifying the penalty clauses and extending the time for conclusion of BTA. Counsel submits that all of these Addendum contained clauses preserving the other terms of the BTA including the arbitration clause.

4. The parties entered into a tripartite agreement with Kotak Mahindra Bank on 25th August, 2022 which also referred to BTA and the consideration amount of Rs. 49 crores. The agreement notes among others clauses that Kotak Mahindra Bank will pay Rs. 20 crores on behalf of the Purchaser/respondent.

5. Learned counsel appearing for the respondent opposes any interim relief on the ground of suppression and the petitioner's failure to establish a *prima facie* case in the absence of requisite pleadings. Counsel submits that there were two additional Addenda to the BTA executed between the parties on 26th August, 2022 and 9th September, 2022. Counsel submits these two Addenda have not been disclosed in the application. It is further submitted that the petitioner is required to specifically plead a case of the respondent dealing with the subject matter of the agreement in order to get the relief prayed for. Counsel submits that the petitioner has also not made out a case of irreparable loss and injury.

6. The undisputed fact with regard to the execution of the Business Transfer Agreement of 19th January, 2022 for the consideration amount of Rs. 49 crores has already been stated above. The BTA was followed by three Addenda on the dates mentioned above. Countering the allegation of suppression made on behalf of the respondent, counsel for the petitioner makes a specific statement that the two further Addenda to the BTA of 26th August, 2022 and 9th September, 2022 were not given effect to by the parties. Hence, as the matter stands there is a BTA

followed by three Addenda Agreements and a Tripartite Agreement of 26th August, 2022 involving the Kotak Mahindra Bank which also pitched in with payment of Rs. 20 crores on behalf of the respondent / purchaser.

7. The petitioners allegation of Rs. 10 crores remaining outstanding from the respondent has been disputed by the latter. The respondent has relied on Addendum dated 9th September, 2022 to say that the consideration amount in the BTA was modified from 49 to 39 crores. Since, the petitioner says that none of the two later Addenda exists, the Court must proceed on the fact that the BTA was executed for a consideration of Rs. 49 crores of which the petitioner has recovered 39 crores and Rs. 10 crores remain outstanding.

8. The objection with regard to the petitioner failing in its obligation to establish a prima facie case for interim relief is not acceptable for the following reasons.

9. The present application has been filed under section 9 of The Arbitration and Conciliation Act, 1996 which entitles a party to an arbitration agreement to apply to a Court for interim measures before, during or even at any time after making of the arbitral award subject to the application being made before the award is enforced. Section 9(1) offers a wide bouquet of measure available to the applicant including for preservation of the subject matter of the arbitration agreement and securing the amount in dispute in the arbitration. The Court is also

conferred with the power to grant such interim measure of protection as the Court may deem just and convenient. Section 9(1) is intended to be a swift-measure order so that the subject matter of the dispute in arbitration or of the arbitration agreement is preserved during the pendency of the arbitration. The rationale is to protect the applicant so that the applicant is in a position to approach the Tribunal with a dispute with substance or enjoy the fruits of the award if and when the award is passed. Section 9(1) measures do not call for a lengthy or detailed inquiry. The Court arrives at a prima facie view of the case made out and the urgency involved and exercises its discretion to pass suitable orders.

10. The aforesaid view is supported by sections 9(2) and (3) which mandate that the arbitral proceedings shall be commenced within 90 days from the date of the interim order and the dispute shall be carried to the arbitration for final resolution. The Division Bench of the Bombay High Court in *Deccan Chronicle Holdings Limited vs. L&T Finance Limited; 2013 SCC OnLine Bom 1005* relied on *Adhunik Steel Ltd. vs. Orissa Manganese and Minerals (P) Ltd.; (2007) 7 SCC 125* and held that the rigours of every procedural provision of the CPC cannot be pressed into service since that would defeat the paramount interests of justice which is to preserve the efficacy of arbitration as an effective form of dispute resolution. This Court came to a similar view in *Bridge Track and Tower Private Limited vs. Simplex Infrastructures Limited* in *AP 291 of 2021* where the petitioner had sought for a similar relief.

11. The decision cited on behalf of the respondent namely *Sunil Kakrania vs. M/s. Saltee Indrastructure Ltd.; AIR 2009 Cal 260* and *Kohinoor Steel Private Limited vs. Pravesh Chandra Kapoor; AIR 2011 Cal 29* were concerned with the necessity of making out a clear case for an order in the nature of Order XXXIX Rule 1(b) which involves the defendant intending to remove / dispose of the property with a view to defrauding its creditors. In both the decisions the Division Bench found the pleadings / allegations to be insufficient for grant of an order of attachment or an order of similar nature. These decisions however do not assist the respondent since the petition contains specific allegations of the respondent trying to withdraw amounts from its bank accounts as well as alienate the properties which form the subject matter of the arbitration agreement / BTA.

12. Further, the respondent's reply to the petitioner's letter dated 10th June, 2023 (notice under section 21 of the 1996 Act) reinforces the apprehension of the petitioner. The respondent has made allegations which are not in tune with the agreed terms of the BTA / arbitration agreement.

13. It may not be possible for a party who comes to Court through an application under section 9 of the Act to make full disclosures and place evidence substantiating the apprehension pleaded. Holding a party to this kind of rigour would discourage the kind of relief which is contemplated under section 9(1) of the Act. The Court is simply to see whether the applicant has made out a case which would warrant the

exercise of discretion and a consequent order preserving the subject matter of the dispute or the arbitration agreement or whether the apprehension is totally unfounded. Hence, the argument that the petitioner being required to subject itself to the drill of the amended provisions of The Code of Civil Procedure, 1908 relating to pleadings is not commensurate to the legislative objective of enacting section 9(1) of the Act.

14. The petitioner has also not prayed for a direction on the respondent to pay Rs. 10 crores to the petitioner. The petitioner has simply asked for the respondent for this sum of money to be kept aside until the disputes are decided in arbitration. The Court deems this to be in consonance with the powers conferred on the Court under section 9(1) of the Act which empowers the Court to grant any other interim measure of protection which appears to be just in the circumstances brought before it.

15. Therefore, until the parties approach an arbitral tribunal for giving effect to the arbitration clause contained in the BTA, the respondent shall keep aside a sum of Rs. 10,33,34,340/- before operating the bank accounts maintained with the ICICI Bank and Kotak Mahindra Bank.

16. Since the parties have been heard at length and will carry the rest of the disputes to arbitration, nothing further remains to be decided in the application. AP 521 of 2023 is accordingly disposed of.

The interim order will remain in place till 2 weeks after constitution of the arbitral tribunal. The parties shall act within the timeframes of section 9(2) of the 1996 Act with regard to commencement of the arbitral proceedings.

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

(**Moushumi Bhattacharya, J.**)