

OCD-6

APOT/260/2023
with
EC/505/2019
IA No. GA/1/2023

IN THE HIGH COURT AT CALCUTTA
In appeal from its
ORDINARY ORIGINAL CIVIL JURISDICTION
CIVIL APPELLATE JURISDICTION
(Commercial Division)

M/S. FERRO CRAFTS
Versus
INDIAN RAILWAYS REPRESENTED THROUGH THE
GENERAL MANAGER, CHITTARANJAN LOCOMOTIVE WORKS

Before:

The Hon'ble Justice I. P. MUKERJI

And

The Hon'ble Justice BISWAROOP CHOWDHURY

Date: 28th August 2023

Appearance:

Mr. Debjyoti Basu, Advocate
Mr. Debyendu Ghosh, Advocate
...for the appellant.

Mr. Partha Ghosh, Advocate
Mr. Rahul Agarwala, Advocate
...for respondents.

The Court: Order in terms of prayer (a) of the stay petition.

We are in a position to dispose of this appeal and the application today dispensing with all formalities.

It appears from the submission of learned counsel and the records before us as follows:

An arbitral award is involved. An execution application has been filed in this Court by the award-holder to enforce the award. An application under Section 34 of the Arbitration and Conciliation Act, 1996 is pending. There is no formal order of the Court staying the award or the execution thereof.

The order dated 23rd November, 2021 in the execution case, EC/505/2019 is most important and to the following effect:

“In the light of the position that appears from the papers, I am of the view that the award debtor should secure the sum of Rs.1,88,57,064.36 by creating a separate interest bearing fixed deposit in the name of the award holder in a nationalized bank.”

What is the effect of this order? Is the above sum to be considered a deposit under Section 36(2) of the Arbitration and Conciliation Act, 1996 for stay of the award and its execution? We notice from the order dated 21st June, 2023 that a submission was made on behalf of the award-debtor before the executing Court that they had not made any application under Section 36(2) of the said Act.

By the impugned order dated 12th July, 2023, the learned Single Judge has noted that the above deposit has been made and that the “entire decretal dues” have been secured. On such premise, his lordship disposed of the execution application.

Having considered the submission of the parties, the execution of the award shall remain stayed for three months or until further orders of this Court, whichever is earlier to enable the respondent/award-debtor to regularise its deposit of Rs.1,88,57,064.36 by obtaining an appropriate order from the appropriate Court as to the effect of this deposit. On the basis of such order obtained, the Court could confirm whether the execution application would be disposed of or not. As of now, it cannot be said that the execution application is disposed of.

The order dated 12th July, 2023 is clarified to the above extent.

The appeal (APOT/260/2023) and the application (IA No.GA/1/2023) are disposed of accordingly.

(I. P. MUKERJI, J.)

(BISWAROOP CHOWDHURY, J.)

A/s.