OCD 1, 2, 3

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE
(COMMERCIAL DIVISION)

IA NO.GA/1/2022
WITH
AP/230/2021
IN
APOT/126/2022

CITI BANK N. A.
VS
M/S. KSE ELECTRICALS PRIVATE LIMITED AND ANR.

IA NO.GA/1/2022
WITH
AP/231/2021
IN
APOT/127/2022

CITI BANK N. A.
VS
M/S. KSE ELECTRICALS PRIVATE LIMITED AND ANR.

IA NO.GA/1/2022
WITH
AP/232/2021
IN
APOT/128/2022

CITI BANK N. A.
VS
M/S. KSE ELECTRICALS PRIVATE LIMITED AND ANR.

BEFORE:
The Hon'ble JUSTICE SOUMEN SEN
AND
The Hon'ble JUSTICE UDAY KUMAR
Date : 3rd July, 2023.

Appearance:
Mr. Jishnu Saha, Sr. Adv.
Mr. Suddhasatva Banerjee, Adv.
Mr. Varun Kedia, Adv.
Mr. Sayak Chakraborty, Adv.
Mr. Avee Jaiswal, Adv.
...for the appellant.

Mr. Sabyasachi Choudhury, Adv.
Mr. Rajarshi Dutta, Adv.
Mr. Vishwarup Acharyya, Adv.
...for the respondents.

The Court : By consent of the parties, the three appeals being APOT/126/2022, APOT/127/2022 and APOT/128/2022 are taken up together as they involve common question of law and fact.

We have heard Mr. Jishnu Saha, learned Senior Counsel representing the appellant and Mr. Sabyasachi Choudhury, learned Counsel representing the respondents.

There is a delay of 153 days in preferring the appeals being APOT/126/2022, APOT/127/2022 and APOT/128/2022. The reason for the delay is explained in the supplementary affidavit affirmed on 14th February, 2023. In paragraph 5 of the supplementary affidavit, the reason for delay has been explained. We are satisfied with the explanations offered in paragraph 5 of the petition and, accordingly, we condone the delay of 153 days in filing the appeals being APOT/126/2022, APOT/127/2022 and APOT/128/2022.

Accordingly, the applications being IA No.GA/1/2022 in APOT/126/2022, IA No.GA/1/2022 in APOT/127/2022 and IA No.GA/1/2022 in APOT/128/2022 are allowed.

The appeals are arising out of a judgment and order dated 23rd November, 2021 in connection with an application filed under Section 9 of the Arbitration & Conciliation Act, 1996. In the said proceeding, the present appellant was the respondent no.2. The grievance of the petitioner was wrongful invocation of the bank guarantee and thereby imminent threat to debit the account of the petitioner.

The transaction arose out of a bank guarantee furnished by the Citibank, Bangladesh in favour of the Overseas purchaser and a Standby Letter of Credit was given by the present appellant in favour of Citibank, Bangladesh which was invoked by the Overseas buyer at a point of time when he was injuncted from invoking the bank guarantee. It appears that the present appellant has remitted the amount to its counter-part in Bangladesh who had presumably remitted the amount to the beneficiary.

In view of the fact that both the banks were aware that the beneficiary was not entitled to the proceeds thereof and had facilitated and remitted the said amount by itself calls for an order of restraint thereby preventing the present appellant from debiting the amount of the respondent no.1. On that score, we feel that the learned Single Judge was justified in securing the interest of the respondents in the arbitration proceeding.

We have been informed that the final hearing of the arbitration has been concluded. In the said proceeding an interim order was passed on 4th November, 2022 whereby the Overseas buyer was directed to deposit an "excess amount of USD 360,253.40/- in an interest bearing account with the Citibank, Kolkata or any other bank…." A copy of the interim award dated November 4, 2022 is taken on record.

This order, in fact, takes care of the concern expressed by Mr. Saha, learned Senior Counsel representing the Citibank, Kolkata with regard to its right to recovery being lost forever.

However, Mr. Saha has submitted that the respondent no.1 and Citibank NA are not the same, accordingly, the observation to the contrary is required to be set aside.

We are of the view that the said observation has to be read in the context of the first sentence of paragraph 16 of the impugned order which reads as under and not beyond it :

> *"16. It would be evident from the transaction that the petitioner, the respondent no.1 and Citibank NA, Kolkata (respondent no.2) treated Citibank NA Bangladesh at Dhaka as an overseas office of Citibank NA, Kolkata."*

We, therefore, do not interfere with the order passed by the learned Single Judge.

Therefore, the appeals being APOT/126/2022, APOT/127/2022 and APOT/128/2022 stand disposed of with the aforesaid observations.

[SOUMEN SEN, J.]

[UDAY KUMAR, J.]

s.pal