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IA No. GA 1 of 2023
APOT No. 278 of 2023
with
AP No. 521 of 2023

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

M/S. COSMIC CRF LIMITED
Versus
M/S. COSMIC FERRO ALLOYS LIMITED

Before:
The Hon'ble Justice I. P. MUKERJI
And
The Hon'ble Justice BISWAROOP CHOWDHURY
Date: 30th August, 2023

Appearance:
Mr. Abhrajit Mitra, Sr. Adv.
Mr. Anirban Ray, Adv.
Mr. Pranit Bag, Adv.
Ms. Patrali Ganguly, Adv.
...for the appellant
Mr. Ranjan Bachawat, Sr. Adv.
Mr. Priyankar Saha, Adv.
Ms. Aparajita Rao, Adv.
Mr. Kalyan Bhaumik, Adv.
Mr. Sampa Bhadra, Adv.
Ms. Ankana Basu, Adv.
...for the respondent

The Court: At the suggestion of this Court and by consent of the parties, the entire dispute between the parties, as would appear in the application under Section 9 of the Arbitration and Conciliation Act, 1996 and the papers in this appeal, is referred to arbitration appointing the Hon'ble Mr. Justice Pinaki Chandra Ghose, a former Judge of the Supreme Court of India as the sole arbitrator. Each of the parties shall within seven days from date file an affidavit in this court agreeing to the above appointment.

The dispute, to be decided by the learned arbitrator, would also cover any additional dispute brought on record in the statement of claim, counter statement or counter claim filed before the learned arbitrator

Advocate on record for the respondent will photocopy the entire set of papers in the Section 9 application and those in this appeal and transmit the same to the learned arbitrator. These papers will be considered as a Section 17 application before the learned arbitrator. The parties may seek direction for filing affidavits to the Section 17 proceedings. Thereafter, the said application may be heard out by the learned arbitrator.

The impugned order before us dated 17th August, 2023 will be treated as the interim order, subject to the modification made by us below, shall be treated as temporary and tentative, subject to any final order/award to be passed by the learned arbitrator.

The bone of contention between the parties at the moment are two cheques of Rs.5 crores each. Those cheques apparently issued by the appellant to the respondent were dishonoured by the bank for insufficiency of funds. Those were issued by one Mr. Milan Ghose who was at one time a Director of appellant-company.

According to Mr. Abharajit Mitra, learned senior advocate appearing for the appellant, the cheques were issued completely without authority by one Mr. Milan Ghosh. He had resigned from the company on 22nd November, 2022 which fact had been uploaded on the web-site of the Registrar of Companies on 30th December, 2022. The cheques were dated 21st February, 2023. There was an agreement between the parties made on 9th September, 2022 which specifically recorded that nothing was payable by the appellant to the respondent.

On the other hand, Mr. Priyankar Saha, learned advocate appearing for the respondent, takes us to various documents in the Section 9 application to argue that evidence has been fabricated by the

appellant and that they are liable for Rs.10,33,34,340/-, the value of the dishonoured cheques.

We find that in the impugned judgement and order these allegations and counter-allegations have not been analysed even prima facie. Furthermore, a case to warrant attachment before judgement has not been made out by the appellant. However, full opportunity is given to the parties to make out or to defend any such allegation before the learned arbitrator.

All points are kept open before the learned arbitrator, while hearing an appeal from an interim order following well-settled principles.

We are not minded to interfere with the discretion exercised by the learned single judge. Nevertheless we are of the view that a blanket order of injunction restraining the appellant from operating bank account without keeping a balance amount of Rs.10,33,34,340/- is very harsh and not warranted in the facts and circumstances of the case. We modify that order to the extent that whatever balance is there in the said account shall be maintained. Nobody knows whether there is at all balance of Rs.10,33,34,340/- in the account. However, the appellant shall be entitled to withdraw each month a sum not exceeding their average withdrawal for every month from that account in the last six months in the usual course of business. An undertaking in the form of an affidavit has to be filed in this court that the appellant would withdraw the amount to such extent only. This would be subject to further order or award to be passed by the learned arbitrator.

The appeal (APOT No. 278 of 2023) and the application (GA 1 of 2023) are disposed of.

(I. P. MUKERJI, J.)

(BISWAROOP CHOWDHURY, J.)