OD-11

ORDER SHEET

AP/703/2023

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

M/S. JINDAL ITF LIMITED
VS
KOLKATA PORT TRUST

BEFORE:
The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA
Date : 5th October, 2023.

Appearance:
Mr. Surajit Nath Mitra, Sr. Adv.
Mr. Nilava Banerjee, Adv.
Mr. Debnarayan Patra, Adv.
Mr. Chhandak Dutta, Adv.
...for the petitioner

Mr. Abhrajit Mitra, Sr. Adv.
Mr. Aritra Basu, Adv.
Mr. Somnath Bose, Adv.
...for the respondent

The Court: This application is for stay of an Award dated 17th June, 2023.

The petitioner/award-debtor, however, seeks stay of the Award but without being called upon to furnish any security as is required under Section 36(3) of the 1996 Act. According to learned counsel appearing for the petitioner, the reason for seeking unconditional stay of the Award is in view of the fact that the award-holder already stands secured to the extent of approximately Rs.32 crores pursuant to the directions contained in paragraph 97 of the Award.

Learned counsel appearing for the award-holder urges that the award-holder has not been able to liquidate the bank guarantees furnished by the award-debtor due to technical reasons and that the award-holder should, therefore, be given leave to encash the bank guarantees and keep the amount invested in a separate account so as not to be deprived of the interest of 9 % p.a. for which the award-debtor has also been made liable.

Paragraph 97 of the impugned Award contains five directions: (a)-(e) which have been passed pursuant to the award-debtor (petitioner before this Court and claimant in the arbitration) being found guilty of breach of the terms and conditions of the Licence Agreement executed between the parties. The arbitral tribunal, accordingly, passed the five directions, three of which direct the award-debtor/petitioner to pay sums of money amounting to approximately Rs.21 crores. The award-debtor has, however, been directed to pay this amount to the award-holder by invoking the performance/bank guarantees submitted by the award-debtor under various Articles of the Licence Agreement. The cumulative amount of the performance/bank guarantees which the award-debtor is to invoke for payment of the amount of Rs.21 crores, however, adds up to approximately Rs.32 crores. In essence, the arbitral tribunal has not only found the award-debtor liable for payment to the award-holder but has also given specific directions as to how the payment is to be made.

The figures disclosed in the directions make it clear that taking the cumulative amount of the bank guarantees, the award-holder stands secured not only for the claims of the petitioner but also to an excess amount of Rs.10 crores.

Hence, the requirement of the petitioner/award-debtor to secure the awarded amount by subjecting itself to the statutory requirement under Section 36(3) of the Act has already been satisfied. The Court is, hence, not inclined to stay the Award upon imposing conditions on the petitioner/award-debtor to secure the Award by furnishing additional sums of money.

The prayer of the award-holder for liquidating the amounts of the bank guarantees cannot be permitted at this stage since that would be in the nature of executing the Award. The Court is informed that the petitioner has already filed an application for setting aside of the Award. Hence, permitting the award-holder to liquidate the amounts at this stage may have a bearing on the Section 34 application if the petitioner/award-debtor succeeds in having the Award set aside.

In any event, liquidating the amounts is also not necessary at this stage since the award-holder is sufficiently protected by the directions of the tribunal whereby the petitioner has been directed to make good the payments by invoking the bank guarantees. The award-holder, thus, stands secured to the amounts of the bank guarantees which comes to approximately Rs.32 crores.

The other point of the award-holder being protected to the extent of the interest awarded is also not necessary to be gone into at this stage since the award-holder stands to gain from the buffer of about Rs.10 crores in the bank guarantees which form part of the directions. In any event, the Tribunal has given interest only in 1 of the 5 directions.

The Court proposes to hear out the Section 34 application and the parties before the Court will have to wait for the decision in the said application before they can seek any benefits consequent to the award.

The operation of the impugned award dated 17th June, 2023 is accordingly stayed albeit without conditions on the satisfaction of the facts shown to the Court.

The Court will pass necessary orders in the Section 34 application which is due to be listed on 6th October, 2023. Needless to say, the award-debtor will keep the bank guarantee renewed from time to time upon periodic intimation to the award-holder.

AP/703/2023 is disposed of in terms of the above.

(MOUSHUMI BHATTACHARYA, J.)

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