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IN THE HIGH COURT AT CALCUTTA
In appeal from its
ORIGINAL JURISDICTION
CIVIL APPELLATE JURISDICTION
[Commercial Division]

APOT/362/2023
WITH
AP/647/2022
IA NO: GA/1/2023

SREI EQUIPMENT FINANCE LTD.
Versus
DEEPIKA INFRATECH PVT. LTD.

Before:
The Hon'ble Justice I. P. MUKERJI
And
The Hon'ble Justice BISWAROOP CHOWDHURY
Date: 9th October, 2023

Appearance:
Mr. Jishnu Saha, Sr. Adv.
Mr. Swatarup Banerjee, Adv.
Mr.Souvajit Dasgupta, Adv.
Mr. Sariful Haque, Adv.
Mr. Rajib Mullick, Adv.
Mr. Biswaroop Ghosh, Adv.
Mr. Ishaan Saha, Adv.
...for appellant

Mr. Aman Agarwal, Adv.
...for respondent

The Court: The facts of this case are very unusual. The court seldom comes across a situation as has arisen in this case.

The appellant/petitioner alleges that the initiation, institution and prosecution of arbitral proceedings by the respondent was tainted with fraud.

Mr. Jishnu Saha, learned senior advocate ably assisted by Mr. Swatarup Banerjee, learned advocate appearing for the appellant, submitted as follows:

The appellant/petitioner had a claim of about Rs.130 crores against the respondent.

Even before the appellant/petitioner could take substantive steps to pursue this claim, the respondent fraudulently constituted an arbitral tribunal. Without any notice to the appellant, the arbitral tribunal purportedly proceeded with the arbitral reference and made and published the subject award.

The alleged case which was run before the learned arbitrator and award passed subsequently is also very interesting. We really never come across this kind of an award.

The award limited the liability of the respondent to Rs.14.27 crores.

The appellant/petitioner was highly aggrieved by this award. They promptly filed an application under Section 34 of the Arbitration and Conciliation Act, 1996 to set it aside on principally the ground that it was a product of fraud. They challenged it under Section 34(2)(b) explanation 1(i) to the said Act.

Obviously, proceeding on the basis that when the challenge made to the award is based on fraud, it is non-est or nullity in the eye of law and cannot be circumscribed in all cases by the provisions of the Arbitration and Conciliation Act, 1996, the learned judge ordered stay of the said award.

To further carry out their design, the respondent deposited in court the said sum of Rs.14.27 crores with the Registrar, Original Side.

Meanwhile, the respondent company was being adjudicated under the Insolvency and Bankruptcy Code, 2016. Mr. Saha submitted that this deposit was made by the respondent to show before the concerned authority that under a lawful award they were liable to the appellant/petitioner to the extent of the above sum only.

Subsequently, the appellant/petitioner filed an application before the learned single judge to withdraw this amount of Rs.14.27 crores on the ground that it was the admitted amount and deposited by the respondent with the Registrar.

There is a provision in Chapter XXIV of the civil procedure code where the defendant can deposit the admitted sum in court which the plaintiff can withdraw and from the date of such deposit interest ceases to accrue.

The learned judge by the impugned judgement and order dated 25th September, 2023 rejected the application of the appellant/petitioner to withdraw that amount.

We are of the view that the above deposit is not to be treated as security furnished by the respondent under Section 36 but a deposit of the admitted amount in a civil proceeding under Chapter XXIV of the Code.

In our opinion, the appellant should be allowed to withdraw this amount from the Registrar. More so, for the reason that on 8th March, 2023 a Resolution Professional has been appointed and that under Section 14 of the Insolvency and Bankruptcy Code, the appellant/petitioner is disabled from prosecuting his claim against the respondent, at least for the time being.

We have also heard learned counsel representing the Interim Resolution Professional.

Dispensing with all formalities, we have heard out the appeal.

We dispose of it by directing the Registrar, Original Side to release the sum of Rs.14.27 crores with accrued interest lying in deposit with her, to the appellant/petitioner within four weeks of communication of this order, the period covered by the long vacation excepted.

The appeal (APOT/362/2023) and the application (IANO:GA/1/12023) are disposed of.

We make it clear that we have not dealt with the merits of the section 34 application.

(I. P. MUKERJI, J.)

(BISWAROOP CHOWDHURY, J.)

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