OCD-7

ORDER SHEET

IA NO. GA/1/2023
In
APOT/385/2023

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE
(Commercial Division)

DHUNSERI TEA AND INDUSTRIES LTD.
VS
ROOP KUMAR CHOPRA AND ORS.

BEFORE:
The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA
Date : 18th October, 2023.

Appearance:
Mr. Rajarshi Dutta, Adv.
Mr. Debargha Basu, Adv.
Mr. Rahul Poddar, Adv.

Ms. Manju Agarwal, Adv.
Mr. Hareram Singh, Adv.
Ms. Shilpa Das, Adv.

The Court: The appeal is against an order of a learned sole Arbitrator dated 20th September, 2023. The order was passed on an application filed by the petitioner under Section 17(1) of the 1996 Act. The petitioner is the claimant in the arbitration.

The petitioner now prays for an interim order in the appeal asking for security of Rs.15,55,11,711/- as the admitted dues of the petitioner from the respondents.

The relationship between the parties is that of principal and agent, the petitioner being the principal who supplied tea to the respondents for use and sale. The petitioner claims substantial amounts of money from the respondents as unpaid dues. The parties consented to go to arbitration and the reference started from August, 2022.

Learned counsel appearing for the appellant (claimant in the arbitration) prays for an order of security on the ground of absence of reasons in the impugned order dated 20th September, 2023. Counsel also relies on an earlier order passed by the learned Arbitrator in an application filed by the petitioner for an interim award under Section 31(6) of the 1996 Act. Counsel submits that the learned Arbitrator noted that there were several admissions on the part of the respondents of dues outstanding to the petitioner. Counsel submits that the only reason why the learned Arbitrator did not proceed to pass an interim award was to give an opportunity to the respondents to present their case.

Learned counsel appearing for the respondents opposes any interim order on the ground that the appellant has not disclosed documents and also that the respondents are not liable to make any payment to the petitioner.

Section 9(1)(b) of The Arbitration and Conciliation Act, 1996 empowers the Court to pass interim measures before, during and after the arbitration but until execution of the award. Sub-section (1)(b) is for an order in the nature of securing the amount in dispute, forming the subject-matter of the arbitration.

In the present case, there are admissions and that too, recorded by the learned Arbitrator on the part of the respondents to the effect that the respondents owe sums of money to the petitioner. The petitioner's claim in the arbitration is approximately Rs.27 crores but the petitioner has prayed for security only to the extent of approximately Rs.15.55 crores. The prayer is based on a balance confirmation provided by the respondents by a mail dated 25.06.2020 which reflects the amount of Rs.15,55,11,711/-.

The respondents' objection is based on the parties already being before the learned Arbitrator and the Section 17 application being under consideration.

This Court is however of the view that the 1996 Act does not prevent a party during the course of arbitration to come up by way of an appeal under Section 37 of the Act for interim relief. The interim relief has to be read as provided under Section 9(1) of the Act. The party in the arbitration must be secured to the extent of the dispute which is being considered by the learned Arbitrator. Further, the petitioner/appellant is not seeking any order of payment but simply an order of security. There is a vital difference between the two and the Court sees no impediment in allowing the latter.

The parties can certainly go on with the arbitration and the learned Arbitrator will decide as the learned Arbitrator deems fit in the ongoing proceedings. The appellant/petitioner however is required to be secured so that the arbitration continues without a hitch and without any party being put at risk.

GA/1/2023 is accordingly allowed and disposed of by directing the respondents to furnish security for a sum of Rs.15,55,11,711/- and deposit the same in a separate interest bearing account in a scheduled bank, status of which will be intimated by the respondents to the appellant as well as to the learned Arbitral Tribunal.

It is made clear that this order will not prevent the parties from continuing with the Section 17 proceedings or with any other proceedings in the arbitration.

Learned counsel appearing for the appellant submits that the appeal may also be disposed of.

APOT/385/2023 is accordingly disposed of.

Learned counsel appearing for the respondents prays for stay of operation of this order.

Considering the facts and material placed before the Court, the prayer for stay is considered and refused.

(MOUSHUMI BHATTACHARYA, J.)

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