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APOT/458/2023
IA No.GA/1/2023

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

MSP SPONGE IORN LIMITED

-Versus-

TATA STEEL LIMITED

BEFORE :
THE HON'BLE JUSTICE SOUMEN SEN
And
THE HON'BLE JUSTICE UDAY KUMAR
Date : 22nd December, 2023

Appearance:
Mr. Rajarshi Dutta, Adv.
Mr. Vishwarup Acharyya, Adv.
Mr. V. V. V. Shastri, Adv.
...for the appellant

Mr. Lokenath Chatterjee, Adv.
Mr. Joydebh Ghorai, Adv.
Mr. Diptesh Ghorai, Adv.
...for the respondent.

The Court : The applicants are the judgment-debtors. They have filed an application challenging an award dated 17th July, 2018 whereby the judgment-debtor was directed to pay a sum of Rs.1,11,41,882/-. Admittedly, there is a delay in furnishing security. It appears that on 5th October, 2023 a bank guarantee for a sum of Rs.39 lakhs was furnished on 19th December, 2023. A cash security of Rs.60 lakhs deposited in terms of the order dated 29th July, 2019 was, however, retained by the Registry. On 16th October, 2023 learned Single Judge noticing that the bank guarantee that had expired on 22nd April, 2021, was not renewed, permitted the award-holder to withdraw the sum of Rs.60 lakhs furnished as cash security on 29th July, 2019 along with accrued interest and appropriate the same towards part satisfaction of the decretal dues and the matter was made returnable on 17th November, 2023. On 12th December, 2023 on the basis of the assurance given on behalf of the award-debtor that the bank guarantee would be extended, a peremptory direction was given upon the award-debtor to furnish the bank guarantee on or before December 18, 2023 and the matter was made returnable on 20th December, 2023. On 20th December, 2023, the learned Single Judge has recorded that the bank guarantee has been furnished in terms of the aforesaid assurance and a certificate issued by the Registrar-in-Insolvency, Original Side recording that the bank guarantee of Rs.39 lakhs has been furnished was taken on record. The matter was directed to appear in the monthly list of January, 2024 for further hearing.

In view of the fact that the Court had accepted the renewed bank guarantee, we are of the view that the award-holder could not have withdrawn the said sum of Rs.60 lakhs as the learned Single Judge as the delay in furnishing the bank guarantee was condoned by such acceptance. The claim to realise a sum of Rs.60 lakhs with accrued interest is dependent upon the failure on the part of the award-debtor to renew the bank guarantee as recorded in the order dated 16th October, 2023. Having regard to the fact that the said renewed bank guarantee has been accepted by the learned Single Judge on 20th December, 2023, we are of the view that the award-holder could not have realized the said sum of Rs.60 lakhs as the breach has been cured.

Accordingly, we direct the award-holder not to encash the demand draft or cheque issued by the Registrar, Original Side, High Court Calcutta. In the event the same has been encashed in the meantime, the award-holder shall immediately re-deposit the said amount with the Registrar, Original Side with accrued interest, if any or furnish a counter guarantee for a sum of Rs.61,50,568/- within a period of four weeks from date, which shall be kept renewed till the disposal of the application for setting aside of the award.

It would be open for the award-holder not to renew the counter guarantee if furnished in lieu of cash realised and to apply for encashment of the bank guarantee in the event the award-debtor fails to renew the bank guarantee on time.

With the above direction, the appeal (APOT/458/2023) and the connection application (IA No.GA/1/2023) stand disposed of.

Photocopy of the cheque issued by the Registrar, Original Side in favour of the respondent herein for a sum of Rs.61,50,568/-, is kept on record.

Since no affidavit has been called for, the allegations made in the appeal and the application are deemed to have been denied.

(SOUMEN SEN, J.)

(UDAY KUMAR, J.)

As.