



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL ARBITRATION APPLICATION NO. 107 OF 2020

Urban Infrastructure Trustees Limited

...Applicant

Versus

Mrs. Leena Tulsi Bhimjiyani & Ors.

...Respondents

- Mr. Aditya Bapat, Mr. Arun Pereira and Ms. Mumtaz Bandukwala i/b Junnarkar & Associates for Applicant.
- Mr. Akshay Petkar, for Respondent Nos. 1(a) to 1(d) and 4.
- Mr. Prateek Sekseria, Senior Advocate a/w Mr. Saket Mone and Mr. Shrey Shah i/b Vidhi Partners, for Respondent No. 2.
- Ms. Gulnar A. Mistry, for Respondent No. 3.

CORAM : MANISH PITALE, J.

DATE : 01st SEPTEMBER, 2023.

P. C. :

1. By a separate order passed today, the application has been dismissed.

2. The learned Counsel appearing for the Applicant submits that pursuant to order dated 12th August, 2022, passed by the Hon'ble Supreme Court, an amount of Rs. 7,23,34,059/- was deposited by Respondent No. 2 before this Court. It is submitted that this Court may grant stay of disbursement of the said amount in favour of the said Respondent for a period of two weeks.

3. In that context, the learned Counsel for the Applicant relies upon judgment and order passed of the National Company Law Appellate Tribunal, New Delhi dated 25th November, 2019, which was

subject matter of challenge in the Civil Appeal before the Hon'ble Supreme Court.

4. The aforesaid prayer is opposed by the learned Counsel appearing for the Respondents.

5. The relevant portion of the order of the Hon'ble Supreme Court dated 12th August, 2022, reads as follows.

“It appears that an application under Section 11 of the Arbitration and Conciliation Act, 1996 being Commercial Arbitration Application No. 107 of 2020 [(L):77] has been preferred by the present appellant which is still pending consideration before the Commercial Division of the High Court.

We need not record and go into the rival submissions as Mr. Divan fairly states that his client is willing to deposit the sum of Rs. 7,23,34,059/- in said Commercial Arbitration Application No. 107 of 2020 [(L):77] which deposit may abide by such orders as may be passed in said application.

In the circumstances, it is directed that :

(a) An amount of Rs. 7,23,34,059/- shall be deposited by the respondent to the credit of said Commercial Arbitration Application within two weeks from today.

(b) It shall be open to the concerned Court to pass such orders with respect to that amount, as may be deemed appropriate in accordance with law.

(c) All rights and contentions of the parties are

left open.

(d) Any of the observations made by the NCLT and NCLAT shall not be taken to be reflection on merits of the matter.

With these observations, the instant appeal stands disposed of. No costs.”

6. Considering the observations made by the Hon’ble Supreme Court in the above quoted order, particularly leaving it open for this Court to pass appropriate orders in respect of the amount that was to be deposited by Respondent No. 2, this Court is not inclined to accept the prayer made on behalf of the Applicant.

7. It is an admitted position that the said amount was indeed deposited by the Respondent No. 2 with the Prothonotary and Senior Master of this Court pursuant to the order passed by the Hon’ble Supreme Court.

8. Since this Court has found that the claims sought to be raised by the Applicant in the facts of the present case are *ex-facie* barred by limitation, the prayer made on behalf of the Applicant for stay of disbursement of the amount for a period of two weeks cannot be granted.

9. Accordingly, the prayer is rejected. The aforesaid amount with accrued interest, if any, shall be disbursed by the Prothonotary

and Senior Master of this Court, in favour of Respondent No. 2 or Respondent No. 5, of which the Respondent No. 2 is a promoter.

(MANISH PITALE, J.)