



WEB COPY



C.M.A.No.1866 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.1866 of 2023

and

C.M.P.No.18208 of 2023

M/s. Eco Grab,
Having registered office at
No.5/1, Annasamy Lane,
Chennai – 600 001.
Represented by its
Managing Partner,
Srinivasa R.

... Appellant

Vs

M/s SIA 'Green Fields',
Having registered office at
Rupniciba iela 7 – 13,
Riga LV-1010, Latvia-
Rep., by its Authorised Signatory,
Balakrishnan N.

... Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 37 of Arbitration and Conciliation Act, 1996, against the order dated 26.06.2023 passed in Interim Application dated 13.05.2023 in the matter arising out of Purchase Agreement No.08/2019 dated 16.08.2019, on the file of Hon'ble Sole Arbitrator.



WEB COPY



C.M.A.No.1866 of 2023

For Appellant : Mr. N. Sivaprakash

For Respondent : Mr. H.S. Hredai

J U D G M E N T

This Civil Miscellaneous Appeal is filed challenging an order passed by the learned Arbitrator in an interim application filed under Section 17 of the Arbitration and Conciliation Act, 1996.

2. The appeal arises under the following circumstances:-

2.1 The respondent herein had made a claim petition before the learned Arbitrator for recovery of 140,005 Euros, with interest.

2.2 The respondent filed several applications under Section 9 of the Arbitration and Conciliation Act before this Court. The appellant and the respondent entered into a memorandum of compromise dated 22.02.2023 by which the appellant admitted that they were due to pay a sum of Rs.57,18,200/- to the respondent herein. They had also agreed to pay the said sum in ten installments. The applications were disposed of on those terms. The parties also agreed to have the claim regarding the balance



C.M.A.No.1866 of 2023

amount and other issues decided by the learned Arbitrator. Admittedly, the appellant had not paid the installments as agreed upon by them. The respondent filed an application under Section 17 of the Arbitration and Conciliation Act for appointment of Commissioner to seize the machinery and equipments that were sold by the respondent herein. They filed another application for interim injunction restraining the appellant from making use of or running the equipments.

2.3 The learned Arbitrator found that since there is a default on the part of the appellant to honour their own undertaking to pay the admitted dues, the settlement agreement executed between them becomes inoperative; that hence, the entire admitted amount of Rs.57,18,200/- becomes payable and directed the appellant to pay the said sum on or before 13.07.2023 failing which the learned Arbitrator permitted the respondent to take possession of the machinery and passed other incidental orders. Aggrieved over the same, the appellant has preferred the above appeal challenging the said order.

3. The learned counsel for the appellant submitted that they could not pay the amount agreed upon by them due to financial constraints.



C.M.A.No.1866 of 2023

However, the appellant is willing to offer furnish security for a sum of Rs.57,18,200/-.

4. The learned counsel for the respondent / caveator submitted that since the appellant had violated their own undertaking, no indulgence should be shown. That apart, the claim is for 140,005 Euros which is approximately more than a crore in Indian rupees. Therefore, the request of the appellant to furnish security for a portion of the claim amount should not be accepted.

5. This Court perused the memorandum of understanding entered into between the parties and the order passed by the learned Arbitrator which is impugned in the instant appeal. As per the schedule of payments attached to the memorandum of understanding, the appellant ought to have paid Rs.10,00,000/- on 23.04.2023 and paid the remaining admitted sum in installments on or before 23.01.2024. No payments have been made as stated earlier. As could be seen from the memorandum of understanding, the appellant had time to pay the entire admitted amount till 23.01.2024. Therefore, this Court is of the view that instead of directing the appellant to



C.M.A.No.1866 of 2023

pay the admitted amount of Rs.57,18,200/- within two weeks as directed by the learned Arbitrator, it would be just and reasonable to direct-

(a) the appellant to pay a sum of Rs.20 lakhs to the respondent within a period of three weeks from today; and

(b) to pay Rs.10 lakhs within 30 days, from the end of third week from today.

6. In view of the appellant's conduct in not complying with their own undertaking, this Court is of the view that it would be just and reasonable to direct the appellant to furnish security for the balance claim amount within three weeks from today.

7. It is needless to say that if any of the above directions are not complied with, the direction issued by the learned Arbitrator in paragraphs 18(b) to 18(e) of the impugned order shall be revived.



C.M.A.No.1866 of 2023

WEB COPY

8. With the above direction, this Civil Miscellaneous Appeal is disposed of. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

18.08.2023

Index: Yes/No
Neutral Citation: Yes/No
AT



WEB COPY



C.M.A.No.1866 of 2023

SUNDER MOHAN, J.

AT

C.M.A.No.1866 of 2023 and
C.M.P.No.18208 of 2023

18.08.2023