

13-06-2024
Item no.3 CD
Subrata
Bhattacharyya
AR(C)

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
(Commercial Division)

FMAT No.135 of 2024
Electrotherm (India) Limited
-VS-
Gainwell Commosales Private Limited
with
CAN No.1 of 2024

Mr. Abhrajit Mitra, sr. adv.
Mr. Anuj Singh, adv.
Mr. Soumabho Ghose, adv.
Ms. Niharika Singh, adv. ...for the appellant

Mr. Debnath Ghosh, adv.
Mr. Varun Kothari, adv.
Mr. Siddharth Sharma, adv.
Ms. Pratiksha Roy, adv. ...for the respondent

Since the point involved is very short, dispensing with all formalities, we have heard out the appeal itself and are disposing of it by this judgement and order.

This is an appeal from an ex parte ad interim order dated 28th February 2024 passed by the learned Judge, Commercial Court at Rajarhat, North 24 Parganas in an application made by the respondent herein under section 9 of the Arbitration and Conciliation Act, 1996.

On the above date, an ex parte interim order was made by the learned court below in terms of prayer (a) of the petition. Prayer (a) is as follows:-

“a. An order of injunction restraining the Respondent herein, and/or its men, servants, agents, assigns, and/or anyone claiming from or through it, from applying and/or bidding in any of the tenders floated by the Indian Railways, whether directly or indirectly, involving supply of transformers of 6531 KVA and 7775 KVA capacity including but not limited to Tender being Tender No.06231235, Tender No.06231236 and Tender No.06231247, to the exclusion of the Petitioner and/or independently in its own capacity in terms of the agreement dated 24th February, 2021, read the Letter of Award, and/or from acting in breach of the Agreement dated

24th February, 2021, read the Letter of Award, in any manner whatsoever.”

Although the impugned order was passed on 28th February 2024, the presentation form of the appeal is dated 23rd April 2024. From time to time the impugned interim order has been extended by the learned court below. We are told that the application is now returnable before that court on 9th July 2024.

The principal grievance of Mr Abhrajit Mitra, learned senior advocate appearing for the appellant/petitioner, is that there is no arbitration clause in the contract on which basis the order under section 9 of the said Act has been made. He also submits that because of the injunction order, the entire business of his client has come to a standstill.

Mr Debnath Ghosh, learned advocate representing the respondent, submits that in breach of the agreement between the parties, the appellant has wrongfully taken away the drawings and are using their trade and business secrets, independently manufacturing the same type of transformers and trying to sell them to the railways to the detriment of the respondent.

The facts in brief are that the railways need transformers for their e-locomotive. For this purpose, from time to time they issued tenders inviting bids from manufacturers and suppliers. The parties entered into a collaboration agreement for jointly engaging in manufacture and development of a particular type of transformers.

The disputes and differences are between the parties and have got nothing to do with the railways.

The question now to be considered for the purpose of passing the interim order is whether the appellant should be allowed to independently bid for the railways’

tender of which the last date is 19th June 2024. On a proper adjudication of the rights of the parties, the decision would be whether the appellant has or has not the right to independently bid in the tender process? Further, whether in the facts and circumstances of the case, the appellant could only manufacture and sell the said type of transformers in collaboration with the respondent and cannot be allowed to bid independently?

We are of the view that the returnable date of the section 9 application should be advanced and fixed on a date not beyond 26th June 2024. Continuance of the interim order should be considered afresh by the learned judge, taking into account the contention of the appellant that there is no arbitration clause, as a preliminary point.

Now, with regard to last date of submission of tender i.e. 19th June 2024, the appellant shall be at liberty to submit their bid without prejudice to the rights and contentions of the parties in the section 9 application.

The appeal and the connected stay application are thus disposed of.

Since affidavits are not invited, the allegations contained are deemed not to have been admitted by the respondent.

[I.P. Mukerji, J]

[Biswaroop Chowdhury, J]

