

1 30.08.2024

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(COMMERCIAL DIVISION)**

**F.M.A.T(ARBAWARD) 36 of 2024
With
CAN 1 of 2024**

**M/S. National Projects Construction Corporation Ltd. (NPCCL)
Vs.
Military Engineer Services (MES).**

**Mr. Debojyoti Basu
Mr. Diptomoy Talukder
Mr. D. Ghosh ... For the Appellant/Petitioner.**

Re: CAN 1 of 2024

We allow Mr. Debojyoti Basu, learned advocate for the appellant to move this appeal and the connected stay/injunction application ex-parte.

In the impugned judgement and order dated 23rd August, 2024 passed by the learned judge, Commercial Court at Alipore, in an application under Section 9 of the Arbitration Conciliation Act, 1996, the prayer of the appellant/petitioner to restrain the respondent from invoking the subject bank guarantee and from terminating the subject contract was refused.

It was, inter alia, observed in the said order that the appellant/ petitioner had not made out a prima facie case. Mr. Basu submits that his client's case based on fraud had not been considered by the learned trial judge and that they had a good prima facie case to obtain the injunction prayed for.

S.D.

We notice from the impugned judgement and order that the returnable date is 13th September, 2024 at 10.45 a.m. before the learned trial judge. We also note her observation that the prayer for injunction was being rejected “at this stage.”

In the circumstances, let the injunction application be considered afresh without being influenced by any observation made by us, by the learned trial judge in the presence of the respondent at a preponed returnable date which the learned judge may fix not later than 10th September, 2024. Till 10th September, 2024 or so soon thereafter as the court is in a position to take up the interim application, let the status quo with regard to the bank guarantee no. 193571123000397 issued by India Overseas Bank, Gurugram, Haryana dated 14th December, 2023 for Rs.2,1150,700/- as mentioned in prayer ‘B’ of the stay/injunction application be maintained.

We record the submission of Mr. Basu that till date the respondent has not taken any steps to invoke the bank guarantee or terminated the subject contract between the parties.

All questions are kept open before the learned court below.

The appeal [FMAT(ARBAWARD) 36 of 2024] and the connected application (CAN 1 of 2024) are disposed of

after hearing them on dispensing with all formalities.

Advocate on record for the appellant/petitioner will take steps to communicate this order immediately to the respondent as well as to the learned court below.

(I.P. Mukerji, J.)

(Partha Sarathi Sen, J.)

