

28.11.2024
SI No.5
Court No.37
(gc)

**In the High Court at Calcutta
Civil Appellate Jurisdiction
(Commercial Division)**

**FMAT (ARBAWARD) 40 of 2024
CAN 1 of 2024**

**Sri Dipak Kumar
Vs.
Eastern Coalfields Limited**

Mr. Debajyoti Basu,
Mr. Diptomoy Talukder,
Mr. D. Ghosh
...for the Appellant.

Mr. Debnath Ghosh,
Ms. Akansha Mukherjee,
Mr. Biswaroop Mukherjee,
Mr. Nilankan Banerjee
...for the Respondent.

1. On an undertaking that the defect shall be removed in course of the day by putting in the deficit court fees, we propose to take up the appeal and the application and dispose it of in terms of this order.
2. The appeal is arising out of an order passed by the learned Commercial Court at Asansol refusing to pass ad-interim order in an application under Section 9 of the Arbitration and Conciliation Act, 1996 in which the appellant has challenged the letter of termination and apprehended the invocation of bank guarantee. Against the order of such

refusal, an appeal was filed in which on 26th September, 2024, the Coordinate Bench was informed that the subject bank guarantee was invoked by the respondent in the meantime. When an appeal has been preferred it was expected that the respondent ought to have waited till the appeal is taken up for consideration without proceeding to invoke the said bank guarantee in a hot haste. The respondent was directed to keep the realized amount as a term deposit in a nationalized bank in the name of the respondent for the time being upon intimation to the appellant. This direction has been complied with as it would appear from the photocopy of the fixed deposit receipt produced in Court today and a copy whereof has been shared with Mr. Diptomoy Talukdar, learned Advocate representing the appellant.

3. The photocopy of the fixed deposit receipt produced before this Court is taken on record.
4. The maturity date of the fixed deposit is 7th October, 2025.
5. In such facts and circumstances of the case, we feel that in the interest of justice, the respondent shall be directed to renew the fixed deposit till the disposal of the arbitration

proceeding. The parties have agreed that there is an arbitration agreement between the parties and left it to the discretion of the Commercial Court to appoint an Arbitrator.

6. In view thereof, we appoint Hon'ble Mr. Justice Siddhartha Roy Chowdhury (Retired) as Arbitrator.
7. Mr. Roy Chowdhury shall fix his remuneration commensurate with his position in consultation with the parties at the first sitting. It is needless to mention that all costs, charges and expenses in connection with arbitration proceeding shall be borne by the parties in equal measure. The learned Arbitrator shall be entitled to appoint a personal staff and a stenographer, whose expenses are also to be borne by the parties in equal measure.
8. The learned Arbitrator shall make a declaration in terms of Section 12(5) read with VII Schedule of the Arbitration and Conciliation Act, 1996 before commencement of the arbitration proceeding.
9. Accordingly, the appeal and the connected application are disposed of.
10. However, there shall be no order as to costs.

11. The certified copy of the impugned order filed in Court today is taken on record.
12. Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Soumen Sen, J.)

(Biswaroop Chowdhury, J.)