

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE
(Commercial Division)

AP-COM/1/2024

R S FUEL PVT LTD
VS
ANKIT METAL AND POWER LTD

AND

AP-COM/2/2024

R S FUEL PVT LTD
VS
ANKIT METAL AND POWER LTD

AND

AP-COM/3/2024

R S FUEL PVT LTD
VS
ANKIT METAL AND POWER LTD

AND

AP-COM/4/2024

R S FUEL PVT LTD
VS
ANKIT METAL AND POWER LTD

AND

AP-COM/5/2024

R S FUEL PVT LTD
VS
ANKIT METAL AND POWER LTD

AND

AP-COM/6/2024

R S FUEL PVT LTD
VS
ANKIT METAL AND POWER LTD

AND

AP-COM/7/2024

R S FUEL PVT LTD
VS
ANKIT METAL AND POWER LTD

AND

AP-COM/8/2024

R S FUEL PVT LTD
VS
ANKIT METAL AND POWER LTD

AND

AP-COM/9/2024

R S FUEL PVT LTD
VS
ANKIT METAL AND POWER LTD

AND

AP-COM/10/2024

R S FUEL PVT LTD
VS
ANKIT METAL AND POWER LTD

AND

AP-COM/12/2024

R S FUEL PVT LTD
VS
ANKIT METAL AND POWER LTD

AND

AP-COM/13/2024

R S FUEL PVT LTD
VS
ANKIT METAL AND POWER LTD

AND

AP-COM/14/2024

R S FUEL PVT LTD
VS
ANKIT METAL AND POWER LTD

AND

AP-COM/15/2024

R S FUEL PVT LTD
VS
ANKIT METAL AND POWER LTD

AND

AP-COM/16/2024

R S FUEL PVT LTD
VS
ANKIT METAL AND POWER LTD

AND

AP-COM/17/2024

R S FUEL PVT LTD
VS
ANKIT METAL AND POWER LTD

AND

AP-COM/18/2024

R S FUEL PVT LTD
VS
ANKIT METAL AND POWER LTD

AND

AP-COM/19/2024

R S FUEL PVT LTD
VS
ANKIT METAL AND POWER LTD

AND

AP-COM/20/2024

R S FUEL PVT LTD
VS
ANKIT METAL AND POWER LTD

AND

AP-COM/21/2024

R S FUEL PVT LTD
VS
ANKIT METAL AND POWER LTD

AND

AP-COM/22/2024

R S FUEL PVT LTD
VS
ANKIT METAL AND POWER LTD

AND

AP-COM/23/2024

R S FUEL PVT LTD
VS
ANKIT METAL AND POWER LTD

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 22nd January, 2024.

Appearance:

Ms. Rakhi Purnima Paul, Adv.

Ms. Vedika Sureka, Adv.

Mr. Snehashis Sen, Adv.

Mr. Danyal Ahmed, Adv.

The Court These are applications for extension of the Arbitrator's mandate under Sections 29-A(4) and (5) of The Arbitration and Conciliation Act, 1996.

The reference was commenced by the notice sent by the respondent before this Court (claimant in the arbitration) on 23rd March, 2018. Pleadings were completed thereafter on 22nd February, 2022 and the petitioner sought for extension of the Arbitrator's mandate by filing an application before the Court. The respondent filed an application thereafter for extension of the mandate and the Court granted the extension by an order dated 28th August, 2023 for a period of four months. The mandate of the Arbitrator hence expired on and from 28th December, 2023.

Learned counsel appearing for the petitioner (respondent in the arbitration) states that the present application was filed before the mandate terminated, first online on 22nd December, 2023 and thereafter physically on

2nd January, 2024. The issue before the Court is not with regard to termination of the mandate or whether the application for extension was made within time. The issue is whether the respondent/ claimant, who went into Corporate Insolvency Resolution Process under the provisions of the Insolvency and Bankruptcy Code, 2016 (IBC) on 20th December, 2023, can oppose publishing of the Award to the extent of the counter-claim of the petitioner herein.

Learned counsel appearing for the respondent/ claimant relies on Section 14 of the IBC in support of the above contention.

Section 14(1)(a) of the IBC, 2016, bars institution of suits or continuation of pending suits or proceedings against the corporate debtor, including execution of any judgment, decree or order in any Court of law, Tribunal, arbitration panel or other authority. The respondent before the Court is the claimant in the arbitration. Hence, even on a cursory basis, Section 14(1)(a) would apply to institution/continuation of suits and other proceedings against the respondent/claimant/corporate debtor.

In the present case, the respondent/corporate debtor has filed the statement of claim in the arbitration against the petitioner herein. The stand taken on behalf of the respondent/claimant/corporate debtor that making of the arbitral award would only fall foul to the extent of the counter-claim filed by the petitioner (respondent in the arbitration) is taking the interpretation of Section 14(1)(a) of the IBC too far in the sense of being hyper-technical, divisive and self-serving.

Section 14(1)(a) can be pressed to service in two situations;

i. If the respondent/corporate debtor had been at the receiving end of an arbitration initiated by the petitioner before this Court, and

ii. If such arbitration had continued after 20th December, 2023 when the respondent went into CIRP.

None of the two conditions are present in this case. The respondent/claimant/corporate debtor therefore, cannot, rely on Section 14(1)(a) to stall the making of the Award to the extent of the award being made on the counter-claim of the petitioner (respondent in the arbitration.)

The other significant fact, which also turns the case against the prayer made on behalf of the respondent/claimant, is a letter of the learned Arbitrator dated 8th January, 2024 by which the parties were informed that the Arbitrator had already made and published the Award on 28th December, 2023 and that the Award is lying ready for delivery. Even though the respondent submits that not much credence can be given to this letter, counsel does not have any evidence at hand to disprove the existence as well as the contents of this letter.

In any event, the Court finds no basis either in Section 14(1)(a) of the IBC and least of all in the provisions of The Arbitration and Conciliation Act, 1996 under which the making of an Award can be stalled or the Arbitrator can be prevented from making/publishing the Award once the Award has been made and is ready for delivery. Splitting the Award in two; allowing the part relating to the claim of the claimant to be published and the part with

regard to the counter-claim being stopped, is an unnatural course of proceedings and one that is neither recognised in law nor in equity.

The stand taken by the respondent/claimant is all the more than surprising since the Court would have expected the claimant to be interested in publishing of the Award. The stand taken is indeed self-serving, if not entirely curious.

AP-COM/1/2024, AP-COM/2/2024, AP-COM/3/2024, AP-COM/4/2024, AP-COM/5/2024, AP-COM/6/2024, AP-COM/7/2024, AP-COM/8/2024, AP-COM/9/2024, AP-COM/10/2024, AP-COM/12/2024, AP-COM/13/2024, AP-COM/14/2024, AP-COM/15/2024, AP-COM/16/2024, AP-COM/17/2024, AP-COM/18/2024, AP-COM/19/2024, AP-COM/20/2024, AP-COM/21/2024, AP-COM/22/2024 and AP-COM/23/2024 are accordingly allowed and disposed of by extending the mandate of the learned Arbitrator for one month from 28th December, 2023 for the learned Arbitrator to take steps for publishing the Award.

(MOUSHUMI BHATTACHARYA, J.)