

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

IA NO: GA-COM/2/2024
AO-COM/7/2024
WITH
AP/90/2023

SHRIVIN PHARMA PVT. LTD.
VS
GOVERNMENT OF MAHARASHTRA.

(Commercial Division)

BEFORE
The Hon'ble Justice I.P. MUKERJI
-And-
The Hon'ble Justice BISWAROOP CHOWDHURY
Date: 4th March, 2024

Ms. Sutapa Sanyal with
Mr. Amit Chowdhury, Advs.
...for the appellant.

Mr. Anubhav Sinha with
Ms. Smriti Shaw, Advs.
...for respondent.

Order in terms of prayer (a) of the stay petition.

In this appeal Ms. Sutapa Sanyal, learned advocate for the appellant contended that the very admission of the application of the respondent under section 34 of the Arbitration and Conciliation Act, 1996 by the learned single judge was flawed. She submitted that unless the entire sum, directed by Section 19 of the MSMED Act, was deposited by the respondent award-debtor, there was no valid application under section 34 in the eye of law. Such amount had not been deposited.

Mr. Anubhav Sinha, learned advocate appearing for the respondent, at the outset took the point of maintainability. He argued that the appeal is not maintainable under section 13 of the Commercial Courts Act, 2015 read with section 37 of the Arbitration and Conciliation Act, 1996. The said Act permitted inter alia an appeal from an order setting aside or refusing to set aside an award and not from the orders complained of by the appellant.

Ms. Sanyal responded by arguing that certain observations have been made in the impugned judgement with regard to the merits of the award, which makes the order appealable.

In our opinion, an appeal under the aforesaid provision only lies against a final order made in a section 34 application. It does not lie from any order under section 36 or any interlocutory order in a section 34 application. In those circumstances the appeal preferred by the appellant is premature. All points taken in the appeal are kept open to be urged at the time of final hearing of the section 34 application.

We also make it clear that if any observation has been made with regard to the merits of the award in the impugned order, it is to be taken as tentative.

With the above observation this appeal (AO-COM/7/2024) and the connected stay application (GA-COM/2/2024) are disposed of, dispensing with all formalities.

The respondent will be at liberty to pay the deficit court fee, as assessed by the department, subject to the contention of the appellant that before such payment a valuable right had accrued to them.

(I.P. MUKERJI, J.)

(BISWAROOP CHOWDHURY, J.)