

ORDER SHEET

AP-COM/408/2024

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

SREI EQUIPMENT FINANCE LIMITED
VS
THE KARUR VYSYA BANK

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 23rd February, 2024.

Appearance:

Mr. Swatarup Banerjee, Adv.

Mr. Rajib Mullick, Adv.

Mr. Biswaroop Ghosh, Adv.

...for the petitioner

Ms. Sweta Gandhi, Adv.

...for the respondent

The Court: Learned counsel appearing for the petitioner and the respondent relies on several clauses of an Agreement for Assignment executed between the petitioner and the respondent on 17th January, 2019. By the said Agreement, the petitioner assigned its loans in favour of the respondent. Besides the other clauses, Clause 2.3 provides for collection of receivables by the respondent/assignee and sub-clause (f) provides that any amount deposited in the designated bank, which is the respondent, shall be withdrawn in accordance with the terms and conditions set out in the designated account.

The clauses of the Agreement dated 17th January, 2019 are repeated in a second Agreement for assignment dated 12th June, 2019 binding the parties to the same obligations.

In short, the respondent was to give the GST component of the receivables from the renters to the petitioner/assignor. The receivables from the renters was to be deposited by the respondent/assignee in an Escrow Account maintained with the respondent bank and the GST was thereafter to be deposited in a separate account for the use and benefit of the petitioner in terms of both the Agreements.

The petitioner's claim and cause of action solely centres on the GST component which the respondent was to give to the petitioner.

The contested issues were decided in a judgment passed by this Court in a series of applications filed by the petitioner covering the same points of adjudication. The judgment is dated 9th August, 2023 whereby the arbitration petitions were disposed of by directing the respondent not to transfer or deal with the amounts in the Escrow Accounts maintained with the respondent till formation of the arbitral tribunal and until the parties can approach the tribunal under Section 17 The Arbitration and Conciliation Act, 1996.

The present dispute is also covered under the same agreements as were before the Court in the judgment which has been referred to above. The only point of contention raised by learned counsel appearing for the respondent is that the Agreement between the respondent/assignee and the renter has come

to an end, therefore, restricting/negating the petitioner's claim for the GST amounts altogether.

This Court is of the view that whether the Lease Agreement has come to an end by efflux of time would not have a bearing on the petitioner's claim or demolish the petitioner's claim in totality. Admittedly, the respondent received receivables from the renters during subsistence of the Agreement between the respondent and the renters. Hence, any amount which the respondent collected as part of the GST component from the renter/s would be the petitioner's entitlement in terms of the two Assignment Agreements. The arbitral tribunal will be the proper forum to decide the amounts which the petitioner is entitled to in terms of these Agreements and also adjudicate on any construction of the clauses of the Agreements which the respondent seeks to argue before this Court.

Till that adjudication is done, the Court is inclined to grant a limited protection to the petitioner in the form of a restraint on the respondent from dealing with the Escrow Account bearing no.2105107000000044 in the respondent bank. The interim order will be subject to the formation of the arbitral tribunal and until the parties can approach the tribunal for continuing the interim protection or otherwise under Section 17 of the 1996 Act. The interim order shall remain in place for a period of six weeks or until the parties approach the tribunal for appropriate relief, whichever is earlier.

AP-COM/408/2024 is accordingly allowed and disposed of in terms of the above.

Since Counsel agree that an Arbitrator can be appointed in this proceeding itself, Ms. Chama Mukherjee, Counsel is appointed to act as the Arbitrator subject to the learned Arbitrator communicating her consent in the prescribed format to the Registrar, Original Side of this Court within three weeks from date.

The petitioner's advocate-on-record shall communicate this order on the learned Arbitrator by 27th February, 2024 along with the requisite details of the contact person of the petitioner.

(MOUSHUMI BHATTACHARYA, J.)