

OC 46

ORDER SHEET
EC/87/2022
IA NO:GA/1/2022
GA-COM/2/2024
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL DIVISION

MADHU TRANSPORT COMPANY PRIVATE LTD.
VS
CHAIRMAN, RAILWAY BOARD AND ORS.

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date: 7th August, 2024.

Appearance:
Mr. Ratnanko Banerji, Sr. Adv.
Mr. Surender Dube, Adv.
Mr. Rishad Medora, Adv.
Mr. Meghajit Mukherjee, Adv.
Mr. Kanishk Kejriwal, Adv.
Ms. Sonia Das, Adv.
...for the petitioner

Mr. Sidhartha Lahiri, Adv.
...for the award-debtor

The Court: The present application has been filed by the award-holder for withdrawal of the awarded amount which was deposited in Court by the award-debtor.

It is pointed out by learned senior counsel appearing for the award-holder that the interim award, pursuant to which the deposit was made, was successfully challenged first under Section 34 and thereof under Section 37 of the Arbitration and Conciliation Act, 1996, which attained finality upon a Special

Leave Petition filed by the award-debtor against the decision under Section 37 of the 1996 Act having also met with dismissal.

As such, it is contended that in view of the final nature of the interim award, the award-holder is entitled to withdraw the entire money deposited by the award-debtor along with interest which might have accrued on the same.

Learned counsel for the award-debtor controverts such submission. It is contended that although the award-debtor's challenge has met with failure up to the Supreme Court with regard to the interim award, at the juncture when the deposit was made, the counter claim of the award-debtor had not been adjudicated. Subsequently, the final award has been passed and the counter claim of the award-debtor has been dismissed, against which a challenge has been preferred under Section 34 of the 1996 Act.

It is pointed out by learned counsel for the award-debtor that at an interim stage, a coordinate Bench had permitted the award-holder to withdraw the sum deposited upon furnishing equivalent bank guarantee, which opportunity was not availed of by the award-holder.

It is further submitted on behalf of the award-debtor that if at this juncture the award-holder, in terms of the interim award, is permitted to withdraw the entire amount, there will be no security in the event the challenge under Section 34 of the award-debtor against the dismissal of the counter claim ultimately succeeds.

At the outset, it has to be clarified that on a perusal of the interim award, it is evident that the same was in the nature of a final adjudication on the issue which came up before the Arbitral Tribunal at that stage.

From the interim award, it is evident that the claim of the claimant/award-holder with regard to the sum of Rs. 13,14,69,178.08p for the value of rakes was finally granted in favour of the award-holder.

The challenge against the same has met with failure up to the Hon'ble Supreme Court. Hence, the said interim award has attained finality irrespective of the ultimate fate of the pending Section 34 application against the dismissal of the counter claim of the award-debtor.

It is not the law that the award-holder, who enjoys the benefits of an interim award which has attained finality, has to wait indefinitely on the apprehension of a challenge under Section 34 against the dismissed counter claim preferred by the award-debtor being ultimately allowed.

Such future prospect cannot be a germane consideration at all in the present context. As of today, the award-holder has successfully obtained an interim award which has attained finality and as such, no further fetter should be imposed on the award-holder in enjoying the fruits of such interim award.

Insofar as the coordinate Bench order passed previously regarding furnishing of bank guarantee for withdrawal of such amount, the same was passed at an interim stage when the SLP had not yet reached finality and as such, the said observation of the coordinate Bench cannot have binding effect at this final stage of the matter.

In such view of the matter, GA-COM/2/2024 is allowed on contest, thereby granting liberty to the award-holder to withdraw the entire amount of Rs. 13,14,69,178.08p which has been deposited by the award-debtor with the Registrar, Original Side, along with interest which has accrued on the same. As and when so approached by the award-holder or its duly authorized

representatives/advocate, the Registrar, Original Side shall pay such amount as indicated above to the said representatives/advocate/award-holder within a fortnight after deduction of the Registrar's commission.

In view of the above, the interim award stands satisfied and accordingly, EC/87/2022 stands disposed of.

(SABYASACHI BHATTACHARYYA, J.)