

OCD-24

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

AP-COM/564/2024

EDWARD FOOD RESEARCH AND ANALYSIS CENTRE LIMITED
VS
METROHM AG AND ANR.

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date : 7th November, 2024

Appearance:
Mr. Ayan Dutta, Adv.
Mr. Niladri Banerjee, Adv.
Ms. Megha Das, Adv.
...for the petitioner

Ms. Dipika Sarkar, Adv.
...for the respondents

The Court:- Affidavit of service is taken on record.

This is an application under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the said Act). The petitioner has prayed for certain interim reliefs. First of such prayer is for appointment of an engineer to make an inspection of the instrument, in order to identify the damaged parts. It is averred that the inspection should reveal the reasons for the damage to the instrument.

An opinion as to whether the equipment supplied by the respondents satisfied the specifications in paragraph 30 of the brochure, must be directed to be furnished by the engineer.

Further prayer for injunction has been made for a direction upon the respondents to supply the quotation in terms of the inspection report that may

be filed by such engineer and a mandatory injunction directing the respondents to replace the parts or repair the same must also be issued, according to the learned Advocate.

It appears that there is a dispute resolution clause by way of arbitration.

The petitioner has already invoked arbitration by serving a notice under Section 21 of the said Act. The dispute is with regard to implementation of the warranty/guarantee clause. According to the petitioner, warranty of twelve months from the date of installation of the equipment and thirteen months from the date of shipment, had been provided by the respondents. After purchase of the said instrument and completion of the installation of the equipment on January 24, 2024, the petitioner allegedly found certain defects in the instrument. The defects were communicated to the respondents. Finally, an engineer visited the laboratory of the petitioner on November 16, 2023 and prepared a report of inspection. Certain parts of the instrument were found to be malfunctioning. The petitioner allegedly made a warranty claim and the respondents rejected such claim on the ground that the petitioner was responsible for the damage of the said parts. In a nutshell, this is the basic dispute between the parties. At this stage, the petitioner prays for appointment of an independent engineer to make an inspection of the machine. If such prayer is allowed, the same will amount to fishing out evidence. In my, prima facie, view, the petitioner is seeking an independent report to substantiate on evidence that the report prepared by the engineer of the respondents was incorrect and the petitioner should be covered by the guarantee and/or the warranty clause.

Section 9 of the said Act does not contemplate passing of such orders. The principle of injunction or interim relief is governed by prima facie case, balance of convenience and inconvenience and irreparable loss and injury. Here, the basic elements are absent. The inspection is not warranted. The dispute itself is with regard to the claim of the petitioner for replacement of parts and denial thereto by the respondent on the ground that the instrument supplied were in proper condition. Whatever damage the same had sustained was due to the actions of the petitioner. Thus, the dispute arose. Such dispute has to be decided by the learned Arbitrator. However, the petitioner is at liberty to raise all questions and pray for interim reliefs, before the appropriate forum. Even if the petitioner is incurring loss because the machines are lying defunct, the dispute as to who would be required to bare the cost of repair or whether the petitioner was entitled to replacement of parts etc. being covered by the warranty clause, should be adjudicated in the arbitration proceeding. Thus, the decision reported at *ILR (2009) Delhi 840 (Prima Developers vs. Lords Co-operative Group Housing Society Ltd.)* does not apply in the facts of this case. This is not a case where an immediate inspection would be necessary to ascertain whether any damage is being caused to the instrument in the intervening period. The instrument is in the custody of the petitioner.

Thus, no orders can be passed.

Application is disposed of.

(SHAMPA SARKAR, J.)