

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

Present :

Hon'ble Justice Moushumi Bhattacharya

EC 397 of 2023

The Federal Agency for State Property Management
of the Russian Federation (Rosimushchestvo)

vs.

Sararf Agencies Private Limited and Ors.

with

I.A. GA No. 1 of 2021 & 2 of 2021

in

AP – COM 216 of 2024

Sararf Agencies Private Limited and Anr.

Vs

The Federal Agency for State Property Management
of the Russian Federation (Rosimushchestvo)

and Anr.

For the petitioner in EC 397 2023 / respondent in AP COM 216 of 2024	:	Mr. Ratnanko Banerji, Sr. Adv.of Mr. Siddhartha Datta, Adv. Mr. Deepanjan Dutta Roy, Adv. Ms. Medha Sachdeva, Adv. Mr. Raunak Bose, Adv.
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For the respondent in EC 397 of 2023 / petitioner in AP COM 216 of 2024	:	Dr. Abhishek Manu Singhvi, Sr. Adv. Mr. Jishnu Chowdhury, Adv. Mr. Soumabho Ghose, Adv. Ms. Samriddha Sen, Adv. Mr. S.K. Singhi, Adv.
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Ms. Riti Basu, Adv.

Mr. Aritra Basu, Adv.

Ms. Piyali Pan, Adv.

Mr. Sayan Banerjee, Adv.

Last heard on : 21.02.2024

Delivered on : 23.02.2024.

Moushumi Bhattacharya, J.

1. The petitioner award-holder seeks enforcement and execution of an Arbitral Award dated 26.3.2021. According to the petitioner, the “Final Arbitral Award” is for Rs. 731,22,51,049.41/- covering the principal amount of Rs. 248,37,58,195/- along with interest from 10.12.2008 – 26.3.2021. The petitioner also claims future interest in terms of section 31(7)(b) of The Arbitration and Conciliation Act, 1996 at the statutory rate to be calculated from 27.3.2021 till payment.

2. The respondent nos. 1 and 2 have challenged the Final Arbitral Award in an application under section 34 of the Act and have also made two applications for stay of the Award under section 36(2) of the Act and for setting aside of the Report of the Ld. Registrar, Original Side, of this Court.

3. The adjudication, which has been invited from the Court, needs to be placed in context.

4. The respondents resist the execution case on the basis of an undertaking given on behalf of the petitioner and an interim order premised

on such assurance. The context will unfold with the narration of facts which will follow a bit later.

5. As of now, the limited question for adjudication is

i) Whether the order passed by this Court on 20.9.2021 amounts to a stay of the Final Arbitral Award;

and

ii) Whether the execution of the Award is inappropriate or unjustified in view of the assurance given by the petitioner to the Court on 14.3.2022.

Whether the order passed by this Court on 20.9.2021 amounts to a Stay of the Final Arbitral Award

6. The award-debtors' construction of the interim protection i.e. stay of the execution of the Award is patently contrary to section 36(1), (2) and (3) of the 1996 Act. The only construction underscored by these provisions is that an Award shall be enforced, regardless of whether the award-debtor has sought for setting aside of the arbitral Award, unless the Court stays the Award on appropriate conditions.

7. The award-debtor argues that the order dated 20.9.2021 amounts to a stay of the Final Arbitral Award. However, the order indicates that the impugned award would only be stayed upon the Ld. Registrar's satisfaction of the valuation of the land which was offered by the award-debtor as security. The order records that the award-debtors were liable for a sum of Rs. 250 crores and that the valuation Report of the award-debtors' property as on 26.7.2021 was Rs. 535 crores with a realisable sale value of Rs. 482 crores. The Court was hence of the view that the land which the award-debtor no. 1 was holding on that date could be treated as security under

section 36(2) and (3) for stay of the impugned award. The relevant paragraph of the order dated 20.9.2021 is quoted below :

“There shall be stay of the impugned Award upon the Registrar being satisfied of the valuation of the land being in excess of or around Rs. 535 crores as on date. The Registrar shall also be at liberty to call for relevant documents for assessing the value of the land including the factory.”

8. The Ld. Registrar, Original Side specifically records in the Report that the Registrar was “*not satisfied*” that the land was valued in excess of or around Rs. 535 crores as on date. *Prima facie*, there is no reason to hold that the Report of the Ld. Registrar is incomplete or suffers from any factual or other infirmities. In any event, once the Ld. Registrar gave his opinion in the matter, it was the obligation of the respondents to undo the dissatisfaction on production of suitable documents for proving that the value of the land was indeed around Rs. 535 crores. The subsequent order of 23.11.2023 connects the dots by specifically holding that :

“It is clear from the documents that there is no continuing stay of the operation of the impugned Award”.

9. The points raised on behalf of the award-debtors are on the merits of the matter i.e. on the infirmities of the impugned Award and the proceedings before the Tribunal. These arguments are entirely within the arena of the setting aside application. The award-debtors have also argued on the security offered for stay of the Award. However, the award-debtors should have taken steps to perfect the security once the Ld. Registrar returned a finding on the same. This admittedly was not done.

10. The point with regard to the limited nature of the interim protection has been found in the earlier section of this judgment. *Nitu Shaw vs. Bharat Hitech (Cements) Private Limited; AP 82 of 2021* was concerned with good security in the form of the land which was offered by the award-debtor for stay of the Award. Section 36(3) of the Act gives a clear discretion to the Court for deciding the conditions which may be imposed on the award-debtor. Such discretion was held to include the Court accepting the land offered as security for stay of the award. *Sarat Chatterjee and Co. (VSP) Private Limited vs. Sri Munisubrata Agri International Limited; 2023 SCC OnLine Cal 2548* does not assist the award-debtors since the award-debtor in that case was directed to furnish security to the extent of Rs. 18 crores. The Court made it clear that the security must be clean and unblemished security and not one which fails to clear the threshold test for stay of an Award. *Sihor Nagar Palika Bureau vs. Bhabhlubhai Virabhai & Co.; (2005) 4 SCC 1* was not concerned with any of the points argued before this Court. The Supreme Court in that case opined that the High Court should have permitted furnishing of security instead of insisting on a cash deposit.

Is the execution proceeding contrary to the time-bound interim protection assured to the award-debtor?

11. The sequence of orders passed by a Co-ordinate Bench would give contextual reference to the captioned issue. The orders are also germane for understanding the import of the “assurance” given by the petitioner/award-holder.

12. The orders were passed in the application filed by the respondents for stay of the Final Arbitral Award dated 26.03.2021.

i) On 20.12.2021, the learned Single Judge recorded, *inter alia*, that no steps would be taken by the award-holder to execute the impugned award till 5.01.2022. The specific recording was to the effect:

“It is fairly submitted by Mr. Banerjee that during the interregnum i.e. till 5th January, 2022 no steps would be taken by his client to execute the impugned award.”

ii) The assurance given on behalf of the award-holder was recorded on the returnable date i.e on 5.01.2022. The order reflects:

“In the meantime and only till the returnable date, the respondents will take no steps to execute the award.”

iii) On 28.01.2022, the Court again recorded the following:

“It is submitted on behalf of the respondent no. 1 that till the returnable date no steps would be taken to execute the impugned award.”

iv) On 14.03.2022, the Court recorded as follows:

“The order dated 28th January, 2022 is directed to continue till the returnable date.”

13. The matter was however not listed on 29.04.2022 and in fact was not listed thereafter. The only possible conclusion from the sequence of the dates is as follows:

i) The assurance given on behalf of award-holder or the interim protection which the award-debtor enjoyed from 20.12.2021 till 29.04.2022 did not extend beyond 29.04.2022.

ii) The onus was singularly on the award-debtor to resolve the uncertainty, even if it is assumed that there was uncertainty pertaining to discontinuation of the interim protection.

iii) The assurance given on the part of the award-holder was a time-bound assurance which would be evident from the interim protection being extended on a date-to-date basis. In other words, it was not a general extension in the sense of leaving the onus on the parties to mention the matter for extension to the Court. The protection granted, on the basis of the verbal assurance of the award-holder, was extended only till the returnable date, i.e. 29.04.2022.

iv) The so-called confusion in relation to extension of the protection to the award-debtor was ultimately clarified by this Court on 23.11.2023 which specifically records that

“It is clear from the documents that there is no continuing stay on the operation of the impugned Award”.

14. Therefore, the only possible conclusion is that the execution proceeding is neither misconceived nor inappropriate or even contrary to the time-bound protection assured to the award-debtors.

15. Another logical facet of the controversy is that the onus must always be on the party who will suffer more on a comparative scale of prejudice if the interim protection goes. The onus would simply mean that quick and effective steps are taken by the party who will lose out if the interim order is vacated. In other words, the uncertainty of whether the interim protection

continues beyond a certain date or not must be resolved by the party who will bear the brunt of there being no interim order.

16. There is no evidence in the present case of the award-debtors taking any steps for ascertaining the status of the interim protection after 29.4.2022. Even if the matter was not listed on 29.4.2022 or after that, the award-debtors complacency in the face of such uncertainty is incomprehensible, to say the least. The award-debtors took no measures to have the matter listed for extending the interim protection or even for expediting the application for setting aside of the award. This would be evident from the order passed by this Court on 23.11.2023 where the Court noted the same.

17. An interim order, by its very name, means an order with a limited shelf-life. An interim order, or any form of interim protection based on an assurance, is not meant to last forever. After doesn't life teach us that good times are mostly short-lived and good times by way of hand-outs are even more fleeting?

18. The Court's view of the expiry of the interim protection after 29.04.2022 would be buttressed by the decision in *Ashok Kumar v. State of Haryana*; (2007) 3 SCC 470 where the expression "till then" was interpreted by the Supreme Court as the interim order being extended till a particular date. The Supreme Court rejected the respondents' contention that they were under a *bonafide* belief that the injunction would continue till it was vacated. The same view was expressed by the Supreme Court in *Arjan Singh v. Punit Ahluwalia*; (2008) 8 SCC 348 where it was held that an order of injunction being operative up to a particular date would mean that the order of injunction shall not remain operative thereafter.

19. The two co-ordinate Bench judgments of the Allahabad High Court in *Ashiq Ali vs. Mohd. Shakeel*; (1985) SCC OnLine All 625 and *Shambhoo Nath Singh Yadav vs. State of U.P.*; 1993 SCC OnLine All 242, respectively, dealt with the words “*till the next date of listing*” and interpreted the same to mean that the said order was to continue till any subsequent order is passed by the Court. In the present case, the interim protection was extended till a specific date thus negating any uncertainty pertaining to extensions beyond that date.

20. Therefore, the application filed by the award-debtors for setting aside of the Ld. Registrar’s Report cannot redeem the situation in the award-debtors’ favour with regard to extending the interim protection beyond 29.4.2022. It is undisputed that there is no order of stay in the operation of the impugned award. Hence, in the absence of such, the award-holder has the necessary statutory acceleration for enforcement and execution of the Award. The only exit-route available to the award-debtors is to furnish good, effective and immediate security for stay of the Award. The award-debtors must furnish the amount which was recorded in the order dated 20.9.2021 i.e. for stay of the Award.

21. The award-debtor has also not made out any case for unconditional stay of the impugned award for fraud or corruption as envisaged under the second proviso to section 36(3) of the 1996 Act.

22. The principal amount of the impugned Award dated 26.3.2021 is approximately Rs. 248 crores along with interest, which comes to about Rs. 731 crores. Given the fact that the award-holder has not been able to

enforce the Award for almost 3 years, the award-debtors are under an obligation to secure something in excess of the principal amount.

23. The Court has discretion in the matter of imposing conditions for stay of an Award. In exercise of such discretion, this Court deems it fit to direct the award-debtors to secure an amount of Rs. 300 crores, which is less than half of the awarded amount inclusive of interest. The award-debtor shall furnish 50% of this amount by way of cash deposit and the other 50% by way of a bank guarantee. The award-debtors are given 4 weeks from the date of this judgment i.e. 22.03.2024 to furnish 100% of the security in the manner directed to the Registrar, Original Side who shall invest the cash component of the security in an interest-bearing account with a reputed Bank.

24. It is made clear that the award-holder shall be at liberty to enforce the Award on and from 23.03.2024 without any further reference to the Court.

25. Since the Court has expressed its view on the award-debtor's specious objection to the Registrar's Report to be without any substance, GA 2 of 2021, which is for setting aside the Registrar's Report dated 30.9.2021, is dismissed.

26. GA 1 of 2021, which is for unconditional stay of the impugned award, is also disposed of in terms of this judgment.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon fulfillment of requisite formalities.

(Moushumi Bhattacharya, J.)