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AP/109/2024
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

SARAF INFRA PROJECTS LIMITED AND ORS
VS
SHRAYANS JAIN AND ORS

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date : 6th November, 2024.

Appearance:
Mr. Mainak Bose, Adv.
Mr. Mayank Shah, Adv.
Ms. P. Bharara, Adv.
Ms. Aasia Hasan, Adv.
Mr. Vikram Wadhera, Adv.
. . .for the petitioner no. 2 to 9.

Mr. Reetobrata Mitra, Adv.
Mr. Paritosh Sinha, Adv.
Ms. Urmila Chakraborty, Adv.
Mr. Saubhik Choudhury, Adv.
. . .for the respondents.

The Court: Within the course of next week, the learned advocate on record for the petitioners is directed to delete the names of the petitioner nos.10 and 11 from the cause title. The said names were incorporated inadvertently. The Vakalatnama indicates that the petitioner nos.2 to 9 have filed this application.

This is an application for stay of operation of the arbitral award dated March 4, 2018 as also stay of all further proceedings in the Execution Case no.26 of 2019, till the disposal of AP No.351 of 2018.

Mr. Mainak Bose, learned advocate for the petitioner submits that in the execution proceeding, one Azad Tanveer Kalim who was the respondent no.11 in the arbitral reference had entered into a compromise with the award-holder and both the parties entered into a full and final settlement of the entire awarded amount as also the interest component. According to Mr. Bose, the sum of Rs.15.5 crores, Rs.4 crores, the interest awarded by the learned Arbitrator, as also the interest as on the date of settlement had been paid, as agreed between the parties. The debt was settled at Rs.12 crores. Mr. Bose submits that the liability of Tanveer under the award was only Rs.4 crores along with interest. The fact that Tanveer paid the entire amount of Rs.12 crores as full and final settlement would be evident, if a simple calculation is made, insofar as, his liability was concerned. The liability of all the petitioners, Raja Ram Saraf (since deceased) and Tanveer were liquidated and the parties compromised the matter. The award-holder entered into the said compromise being fully aware of the internal arrangement between the petitioners and Tanveer Kalim. Mr. Bose refers to different documents to urge that the management of the petitioner Nos. 2 to 9 had been handed over to Tanveer, and as such, Tanveer Kalim settled the claim on behalf of all, by entering into the compromise. Mr. Bose submits that the execution cannot proceed in view of such compromise and appropriation of the amount of Rs.12 crores by the award-holder. Mr. Bose further submits that the factual aspects which have been brought on record by this application, go to indicate that Tanveer Kalim was acting on behalf of himself and all the other award-debtors. Thus, it is urged that until the application for setting aside the award is disposed of, the award-holder should be restrained from continuing with

the execution case. Pointing to paragraphs 52 to 55 of the award, Mr. Bose further submits that a combined reading of the said paragraphs would indicate that the learned Arbitrator was conscious of the fact that Tanveer's liability was only for an amount of Rs.4 crores along with a part of the interest. The amount of Rs.4 crores was paid to Tanveer and Raja Ram Saraf (since deceased), on the basis of a supplementary term sheet and not as per the first term sheet. Payment of any amount in excess of Rs.4 crores was intended to be made in respect of the entire award debt and interest.

The amount of Rs.15.5 crores was paid to the petitioners, who were respondent nos.2 to 9 in the arbitration proceeding. Thus, once the learned Arbitrator had recorded separate and distinct liability in respect of the respondent nos.2 to 9 and 10 and 11 (of the arbitration), the argument of the award-holder that the amount of Rs.12 crores was only towards the final settlement of the liability vis-a-vis Tanveer, is preposterous.

Mr. Reetobroto Mitra, learned advocate for the respondent submits that the award of Rs.15.5 crores in favour of the respondent no.3 (claimant No.3), was against all the respondents. The award of Rs.4 crores in favour of the respondent No.3 (claimant No.3), was against Raja Ram Saraf and Tanveer Kalim. All the respondents in the arbitration proceedings were awarded interest amounting to Rs.4,22,58,904/- as on the date of the award. Further interest at the rate of 9 per cent per annum on and from March 5, 2018, till the date of recovery of the awarded amount, was also awarded in addition to the above. Cost of Rs.11,14,000/- was further awarded in favour of the respondent no.3. According to Mr. Mitra, the joint and several liability of Tanveer in respect of the amount of

Rs.15.50 crores was in addition to the liability in respect of Rs.4 crores, interest and cost etc. Thus Tanveer's share of debt as per the award was beyond Rs.4 crores. It is urged by Mr. Mitra that by the time the settlement had been entered into, the amount payable by Tanveer Kalim towards satisfaction of his share in the award along with interest, came to Rs.12 crores and as such, the liability of Tanveer Kalim was settled accordingly.

Considering the submissions, this Court finds that the settlement application which was filed by way of an affirmed affidavit by Tanveer and the respondent no.3, indicates that the parties agreed that subject to the payment of Rs.12 crores, the execution case no.E.C.26 of 2019 would stand disposed of against Tanveer. Tanveer's name would be deleted from the array of respondents in the execution case. The award-holder would not have any claim against Tanveer. The compromise petition does not speak about total disposal of the EC case No.26 of 2019. The compromise petition does not mention that all disputes between the parties and the claim of the award-holder in terms of the award had been satisfied and the award had been worked out. The settlement agreement does not record the satisfaction and discharge of the liability of the petitioners.

Under such circumstances, the prayers for stay of the execution case as also the award are misplaced. The issues raised shall be decided in the execution case. However, as Mr. Bose urges the Court to look into certain documents which would demonstrate that the management and operation of the companies, who are petitioners before this Court, were handed over to Tanveer and/or assigned to Tanveer and Tanveer had acted on behalf of the petitioner, the petitioners may pray for leave to file a supplementary affidavit in opposition in the execution

proceeding, to bring on record the above facts and documents, before the appropriate court. The petitioners may incorporate a mathematical calculation to substantiate the quantum of debt of Tanveer. All issues raised by Mr. Bose shall be decided in the execution case. If such supplementary affidavit is filed, the respondent No.3 may seek leave to file a reply, accordingly. The application is accordingly disposed of. The prayers for stay of the award and stay of the execution are rejected.

Let the application under Section 34 of the Arbitration and Conciliation 1996 being AP 351 of 2018 be served upon the learned advocate on record for the award holder and be listed on 14th November, 2024.

(SHAMPA SARKAR, J.)

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