

OCD-1

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

APOT/296/2024
IA NO: GA-COM/1/2024

BHUBANESHWARI SEAFOOD PRIVATE LIMITED AND ANR.
VS
UGRO CAPITAL LIMITED

With

AP-COM/777/2024

BHUBANESHWARI SEAFOOD PRIVATE LIMITED AND ANR.
VS
UGRO CAPITAL LIMITED

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date : 5th November, 2024

Appearance:
Mr. Jishnu Chowdhury, Adv.
Mr. Abhidipto Tarafder, Adv.
Mr. S. K. Singhi, Adv.
Ms. Riti Basu, Adv.
Ms. Piyali Pan, Adv.
...for the appellants/petitioners

Mr. P. Sinha, Adv.
Mr. Ritoban Sarkar, Adv.
Mr. K. K. Pandey, Adv.
...for the respondent

The Court:-

RE: APOT/296/2024

This appeal arises out of an interim order dated August 2, 2024 passed by the learned Arbitrator in SAMA Case No. J128030366 between Ugro Capital Limited vs. Bhubaneshwari Seafood Private Limited. The petitioners before this

court are the respondents before the learned Arbitrator. The petitioners have challenged the said order on the following grounds;

(a). The interim orders passed were without jurisdiction, as the respondent had not agreed to the selection of SAMA as the institution which would administer the arbitration. Such objection was informed to the claimant in response to the claimants' notice under Section 21 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the said Act). In the absence of any consensus as to the institution which would administer the arbitration proceeding, the reference of the dispute to SAMA, assumption of jurisdiction by SAMA and subsequent appointment of the Arbitrator were bad in law.

(b). The Arbitrator accordingly lacked jurisdiction and as such could not proceed to deal with the matter. The institution had not been designated by the High Court.

(c). The prayers for interim measures in the application under Section 17 of the said Act were beyond the scope of the main claim and the learned Arbitrator had passed orders and preventive directions which were detrimental to the interest of the petitioner, without considering the effect of such order.

(d). The claimant was appointed as the Receiver to take over physical possession of the movable and immovable properties of the petitioners, with a further direction upon the petitioners to disclose the details of all these assets.

(e). Complete freezing of all the bank accounts and the directions for attachment of the accounts to ensure that the petitioners could not operate the

said accounts, were beyond the scope of the principles governing grant of interim reliefs by an Arbitrator, during the pendency of the proceeding.

(f). The order itself smacks of bias and the conduct of the learned Arbitrator would indicate the hot haste with which the Arbitrator wanted to pass the award.

Mr. Sarkar, learned Advocate for the claimant/respondent submits that the issue of bias was never raised before the learned Arbitrator. Clause 23 of the agreement clearly provided that the parties had agreed that the arbitration would be administered by a government recognized institution. This was not a case of unilateral appointment of SAMA. Moreover, the proceedings before SAMA also entitled the petitioners to choose the Arbitrator. The petitioners did not ever exercise such choice. The question of bias did not arise. The orders would reflect that the petitioners were given adequate opportunity to contest the matter. The petitioners were all along aware of the proceedings and the proceedings went on for three months. Upon long awaiting, the interim protections were given. Such was the usual, correct and lawful course to be followed in any arbitration proceeding to secure the claims of the claimant. Mr. Sarkar relies upon several decisions of the Hon'ble Apex Court to support his contention that the issue of bias could not be raised unless the appointment was hit by the provision of Section 12 read with 5th and 7th schedule of the said Act. Reference was made to the documents in support of his further contention that the petitioner had failed to point out a single instance, which would indicate that the learned Arbitrator

had proceeded in a biased manner. Such allegation of bias should not be accepted. Bias had to be pleaded and proved.

The question in this appeal is whether the interim orders/measures which are impugned before this Court, were justified under the facts and circumstances of the case and in law. Moreover, prima facie it appears that the petitioners had objected to appointment of SAMA as the institution of choice for the arbitration.

It further appears from the records that the claim was of Rs.60,98,581/-. The petitioners disputed such claim, but accepted that the outstanding dues would be around Rs.36,29,860/-. The application under Section 17 discloses that there was a default in repayment of the loan. That the petitioner had neglected to pay the amount claimed and the respondent had issued a recall notice of the entire amount. However, the said application does not disclose either by way of pleadings or by reference to any document, that the petitioners were in the process of disposing of all their assets, both movable and immovable and were siphoning off the funds which were available in their bank accounts. There is no pleading that such action of the petitioners required immediate intervention or protection by the Court, so that the award, even if passed, would be rendered ineffective. Interim orders are passed on the principles of prima facie case, balance of convenience and inconvenience and irreparable loss and injury. This is a case of unpaid dues. The petitioner has acknowledged part of such claim. Thus, the submission of Mr. Sarkar to the extent that some security has to be allowed by the Court is not unwarranted. The question is whether there

was any necessity in the facts and circumstances of this case to pass all the interim protections as are reflected in the order impugned. The prayers in the application are quoted below:-

a. "That pending the hearing and final disposal of the present arbitration proceedings and until enforcement of the arbitral award in accordance with Section 36 of the Act, to the extent of Rs.60,68,581/-;

b. The Ld. Arbitrator be pleased to freeze bank account(s) of the Respondent(s) linked with PAN number(s) of the respondents being AGYPD2692R; AAGCB3083M;;; and permit the Applicant/Claimant to communicate the same to the concerned authorities;

c. That the Respondent(s), jointly and severally, be ordered and directed to furnish security, by way of bank guarantee or such other security, for an amount of Rs.60,98,581/- to protect the interest of the Applicant/Claimant in the present proceedings;

d. That the Respondent(s), jointly and severally be ordered and directed to furnish and disclose the details of properties/assets, movable and immovable, encumbered and unencumbered, owned by the Respondent(s);

e. The Ld. Arbitrator be pleased to attach the movable properties/goods specified in schedule-1;

f. The Ld. Arbitrator be pleased to attach the vehicles registered on the name of Respondents;

g. The Ld. Arbitrator be pleased to appoint the claimant as receiver with a direction to attach the movable properties goods specified in schedule-1 and vehicles registered in the name of Respondents;

h. The Ld. Arbitrator be pleased to pass an order to provide necessary police aid to the receiver to attach, take charge and physical possession of the movable assets specified in schedule-1 and vehicle registered on the name of Respondents;

i. That, pending the hearing and final disposal of the application and the arbitration proceeding, ad-interim reliefs in terms of prayers hereinabove be granted in favour of the Applicant/Claimant;"

The directions that the petitioner should furnish a bank guarantee for an amount of Rs.60,98,581/-, disclose the details of their assets, both movable and immovable, encumbered and/or unencumbered etc., the order of attachment of movable properties/goods, appointment of the claimant as the Receiver with a direction to inventorize and attach all movables and immovable, were disproportionate, excessive and beyond the scope of the claim. The order has not taken into consideration the inconvenience and hardship that would be caused to the petitioners. The same would amount to closure of business, inability to enjoy movable and immovable assets etc. There is no recording of satisfaction that the injunctions and directions were necessary in order to protect the claimant. The averments in the application do not warrant such harsh measures.

Under such circumstances, the impugned order is set aside. The petitioners shall disclose and furnish the details of their bank accounts to the claimant indicating that a total sum of Rs.50 lakhs has been maintained in the said accounts. Such amount shall not be spent or withdrawn or depleted till the disposal of the application under Section 14 of the Arbitration and Conciliation Act, 1996. The petitioners shall furnish the details of the accounts to the claimant within a period of seven days from date and till furnishing of the said details, all the bank accounts of the petitioner shall remain attached. In case of failure to furnish the details within the aforementioned period, all the accounts of the petitioners will remain attached till the disposal of the AP-COM 777 of

2024. In case of compliance, apart from keeping a total balance of Rs.50 lakhs in one or more accounts, the operation of the accounts shall be permissible.

The appeal is disposed of.

All connected applications also stand disposed of.

RE: AP-COM/777/2024

AP-COM/777/2024 is de-tagged, after conclusion of submissions of Mr. Chowdhury, learned advocate for the petitioners.

An arguable case to entertain the application under Section 14 of the Arbitration and Conciliation, 1996 has been made out by Mr. Chowdhury. It is urged that even if the parties had agreed to a dispute redressal mechanism by an institution recognized by Government of India, the choice of the institution could not be unilateral. The notice invoking arbitration by the respondent, mentioned SAMA as the preferred institution. Whereas, in response to the said notice, the petitioner objected to SAMA and requested the respondent to write to the Government of India for selection of any other institution recognized by it. This response ran counter to the proposal of the claimant. The choice of the institution was by the respondent. In the absence of a consent, in my, prima facie opinion, the reference to SAMA is not exactly in terms of the arbitration clause and the law. Thus, the application shall be decided only after affording an opportunity to the respondent to file the affidavit-in-opposition. Let affidavit-in-opposition be filed within two weeks from date. Affidavit-in-reply, if any, be filed within one week thereafter. Let this matter be listed for hearing on 19th

December, 2024 at 3:30 p.m. During the pendency of the hearing of the application, the arbitration proceeding shall remain stayed. It appears that more reliefs than what were parts of the statement of claim have been granted by the Arbitrator, without considering the balance of convenience and inconvenience and irreparable loss and injury. Moreover, when the seat and venue of Arbitration was chosen to be Kolkata, whether the online dispute redressal mechanism could be permissible, is also a question to be finally decided.

All parties to act on a server copy of this order.

(SHAMPA SARKAR, J.)