

OCD 4

ORDER SHEET
SCO/3/2024
IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

VIKAS JAIN
VS
M/S. UGRO CAPITAL LIMITED AND ANR.

BEFORE:
The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA
Date: 6th September, 2024.

Appearance:
Mr. Aniruddha Bhattacharya, Adv.
Mr. Arnab Roy, Adv.
. . .for the petitioner.

Mr. Swatarup Banerjee, Adv.
Mr. Paritosh Sinha, Adv.
Mr. K.K. Pandey, Adv.
. . .for the respondents.

The Court: The present application under Section 379 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short, "BNSS") has been filed with the allegation that deliberately, in order to mislead the Court, the respondent no.2 in the present application, who is a functionary of M/s. Ugro Capital Limited (which is the applicant in the main application under Section 29A of the Arbitration and Conciliation Act, 1996) made false statements in the supplementary affidavit affirmed by the present respondent no.2 in connection with the Section 29A application.

Learned counsel for the present petitioner places particular reliance on paragraphs 4 and 5 of the said supplementary affidavit, which are set out below:

“4. I say that in the instant matter the negotiations with respect to the instant Facility Agreement dated 2nd May, 2019 (hereinafter referred to as the “said agreement”) had taken place from the earlier office of the petitioner situated at Lords Unit No. 124 and 124A, 1st Floor, 7-1, Lord Sinha Road, Kolkata- 700071 and presently the office is situated at 20B, British India Street, 6th Floor, Kolkata – 700069 within the jurisdiction of this Hon’ble Court.

5. I say that thereafter the agreement was signed by the respondent at the branch office of the petitioner situated at Delhi. Thereafter the agreement was sent to the earlier office of the petitioner situated at Lords Unit No. 124 and 124A, 1st Floor, 7-1, Lord Sinha Road, Kolkata –700071 and presently the office is situated at 20B, British India Street, 6th Floor, Kolkata – 700069 within the jurisdiction of this Hon’ble Court and was executed and concluded within the jurisdiction of this Hon’ble Court. A copy of the said Agreement is annexed hereto and marked with letter “B”.”

Learned counsel submits that as such, the premise of the said contentions made in the supplementary affidavit, in a bid to bring the matter within the jurisdiction of this Court, was that the loan transaction between the parties took place entirely within the jurisdiction of this court. In stark contrast therewith, it is evident from the non judicial stamp accompanying the agreement in question, which is also annexed to the supplementary affidavit, that the same was of Delhi.

Even in the facility agreement, the very first sentence categorically states that the said agreement was “made at Delhi”.

Thus, it is clear from the agreement itself as well as the accompanying non-judicial stamp paper that the agreement was executed and concluded in Delhi and not in Kolkata as averred in the supplementary affidavit.

Learned counsel for the petitioner further takes the Court through some of the answers given by the same deponent, who affirmed the supplementary affidavit, as witness before the learned arbitratral tribunal. Before the arbitral tribunal, in answer to Question 90, which was whether it will be correct to say that the emails dated May 2, 2019 and May 3, 2019 were exchanged amongst CMI Ltd., the respondents, and the claimant for release of funds to the respondents, the witness answered that he disagreed. Thereafter, of his own volition, the witness continued to state that after having thorough discussion, negotiations and finalization of the terms and conditions for disbursement of loan, *which entirely took place* in the Kolkata office (emphasis supplied), it was decided that loan disbursement will be at the sole discretion of the claimant company's Kolkata branch office, and the invoice can be provided either by the respondents or CMI Ltd.

Again, in answer to Question 75, put to the said witness on August 13, 2024, as to which office of the claimant company, according to the witness, processed the loan, the witness had stated that the witness refers to paragraph 7 of the affidavit of evidence and that the loan was processed and disbursed from their Mumbai office.

Again, in answer to Question 74, which was whether it would be correct to say that the present loan was disbursed by the Delhi office of the claimant company, the witness answered in the negative.

It is thus contended that the deponent of the supplementary affidavit, that is respondent no.2 in the present application, has been taking completely contrary stands before the Arbitrator as well as before this Court, which is also in direct deviance from the documents annexed to the supplementary affidavit itself. Whereas the agreement shows that it was executed in Delhi, as evidence by the first sentence thereof as well as the non-judicial stamp paper accompanying the same, the witness seeks to make out a case before this Court in the supplementary affidavit that the entire negotiations and transactions, including execution and finalization of the loan transaction, took place in Kolkata. Again, in one of his answers during his evidence, he says that the loan was processed and disbursed from the Mumbai office.

It is submitted that, thus, the statements made in paragraph nos. 4 and 5 of the supplementary affidavit are blatantly incorrect statements, contrary to the evidence and documents of the said deponent himself.

Upon a careful scrutiny of the documents relied on by learned counsel for the petitioner, since at this stage it would be premature to give an opportunity of hearing to the respondents, this Court is of the opinion that no case of perjury under Section 379 of the BNSS has been made out.

I do not find that the case sought to be made out by the respondent no.2 in his evidence before the Arbitral Tribunal and that before this Court in the supplementary affidavit are mutually exclusive.

It may very well be that the facility agreement, which was a component of the entire loan transaction, was signed by the respondents at the branch office of the petitioner situated at Delhi, which is borne out by the statement made in the agreement itself to the effect that it was made at Delhi as well as the stamp paper

being of Delhi. Thereafter, the agreement might have been sent to the earlier office of the petitioner situated within the jurisdiction of this Court in Kolkata and was executed and concluded within the jurisdiction of this Court. The fact that the negotiations as well as final and conclusive execution and conclusion of the agreement took place in Kolkata is not diametrically opposite to the statement in the deponent's evidence that the loan was processed and disbursed from the Mumbai Office. The loan actually being processed and disbursed from the Mumbai Office and simultaneously the agreement being executed finally in Kolkata while being signed previously at Delhi do not contradict each other directly and might have happened without militating against each other. If the facts in the narrative of the respondent no.2 before the tribunal and that in the supplementary affidavit are juxtaposed, I do not find that there is any direct contradiction between them.

Even in answer to Query no.90 in his deposition, the witness holds on to his stand that the negotiations and finalization of the terms and conditions for disbursement of loan entirely took place in the Kolkata Office. It might well have been that the negotiations and the finalization of the agreement took place in Kolkata whereas the loan was actually processed and disbursed from Mumbai and that the agreement, before being finalized but after the negotiations, was sent to Delhi for being signed.

That apart, much reliance cannot be placed, at least at this stage, on the voluntary statements made by the deponent in his evidence, which was beyond the scope of the question put to him by way of Question no.90. Be that as it may, the evidentiary value of such statements shall definitely be considered by

the Arbitral Tribunal where the main dispute is now pending and it would be rather premature for this Court to comment on the same at this stage.

In so far as the present application is concerned, the Court does not find any palpable perjury on the part of the respondent no.2 to justify the Court to form an opinion that it is expedient in the interest of justice that an enquiry should be made into any offence as contemplated in Section 379 of the BNSS.

Accordingly, SCO 3 of 2024 is dismissed.

Let the application under Section 29A of the 1996 Act be listed on September 17, 2024.

(SABYASACHI BHATTACHARYYA, J.)

SP/