OCD-4

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

AP-COM/815/2024

M/S GO AHEAD INFRA PRIVATE LIMITED
VS
NEPL PMIW JV AND ORS

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date : 20th November, 2024.

Appearance:
Mr. Sakya Sen, Adv.
Mr. Amritam Mandal, Adv.
Ms. Swati Agarwal, Adv.
Mr Navlendu Kumar, Adv.
Mr. A. Srivastava, Adv.
Mr. Satrajeet Sen, Adv.
..for the petitioner

Mr. Anirban Kar, Adv.
Mr. Viklp Gupta, Adv.
Mr. Munshi Ashiq Elahi, Adv.
Ms. S. Das, Adv.
…for the respondent no. 1

The Court :- Affidavit-in-opposition filed by the respondents is taken on record.

The dispute arises out of a service contract. The petitioner entered into a service contract with the respondent no. 1. The work relates to extraction of coal. The respondent no. 1 was awarded the work by Central Coalfields Limited and the service contract in favour of the petitioner was in the nature of a sub-contract. The terms and conditions of the agreement, inter alia, indicate that the respondent no. 1 would engage the petitioner as a sub-contractor to execute the contract awarded by Central Coalfields Limited, as per the letter of acceptance. The petitioner would provide gross margin of 4.5% to the respondent no. 1 on the basic contract value excluding GST, Cess or any other duties or taxes levied by Central Coalfields Limited. The petitioner would provide funds to the respondent no. 1 to the tune of Rs.1,84,02,700/- to enable the respondent no. 1 to furnish the performance bank guarantee to Central Coalfields Limited. The funds were to be transmitted by RTGS, to the current account of the lead partner of the respondent no. 1 that is, the respondent no. 2. The funds relating to the performance bank guarantee would be subject to interest at the rate fetched by fixed deposits and the same would be refunded once the performance bank guarantee was discharged by Central Coalfields Limited. The petitioner was also required to pay the GeM portal fees. The dispute arose from the very beginning. The documents are part of the records. The petitioner alleges that the respondent no. 1 failed to hand over free site by removing their machinery, transporters etc.,

Prima facie, the records reveal that the petitioner started the work and raised RA Bills. Mr. Sakya Sen, learned Advocate for the petitioner submits that apart from cash of Rs.1,84,02,700/- which was transferred to the account of the respondent no. 2, the fact that the work was executed for a few months, was not in dispute. The amounts which were raised in the bills were required to be protected. Mr. Sen draws the attention of the Court to the replies written by the petitioner, which do not indicate that there is any specific denial with regard to the claim of the petitioner that some work had been executed.

The respondent no. 1 has all along alleged that the petitioner did not perform the work as per the requirement in the work order. Several documents have been placed before the Court in support of such contention.

Mr. Anirban Kar, learned Advocate for the respondent no. 1 submits that the money was not transferred on the due date. The same was liable to be forfeited as the petitioner did not execute the work as per the specifications. Delay had occurred in execution of the work, on account of which Central Coalfields Limited issued a show cause notice to the respondent no. 1. At such juncture, the respondent no. 1 had no other alternative, but to terminate the contract of the petitioner and forfeit the amount by adjusting the same towards the losses incurred by the said respondent. It is further contended by Mr. Kar that the petitioner wanted to usurp the business of the respondent no. 1 and started communicating directly with Central Coalfields Limited, by ignoring the said respondent. Mr. Kar further submits that whatever amount had been withdrawn from the bank account bearing no. 3336120250000488 of Ujjivan Small Finance Bank Ltd. has been re-deposited. At present, an amount of Rs.78,632,48.72 is lying in the said bank account.

Heard learned Counsel for the parties. Certain facts are not in dispute. The petitioner and the respondent no. 1 entered into a service contract. The respondent no. 1 was entitled to a percentage of 4.5% on the contract value from the petitioner. The petitioner was entitled to the entire amount received from the Central Coalfields Limited towards the execution of the work, out of which 4.5% minus GST, cess and other duties was to be paid to the respondent No.1.

There are communications which are confusing and without evidence, it would not be proper for the Court to decide whether the petitioner is entitled to the entire claim raised as per the RA Bills or whether the respondent no. 1 would be entitled to forfeit the entire amount of Rs.1,84,02,700/- which was transmitted to the account of the respondent no. 2 pursuant to execution of the contract between the petitioner and the respondent no. 1. However, the records do not reveal that at any point of time the respondent no. 1 had specifically denied the fact that the petitioner had started execution of the work and had undertaken mining activity. The respondent no. 1 alleged that the work was not as per their satisfaction and as per the terms and conditions of the contract which resulted in a breach by the petitioner. The respondent no. 1 terminated the contract by forfeiting the money paid via RTGS.

This Court is of the view that the petitioner has made out a, prima facie, case for protection in respect of the money transmitted to the respondent no. 2, which was utilized by the respondent no. 1 in order to get the contract from the Central Coalfields Limited. Clearly, the respondent no. 1 had utilized such money to bag the contract from the Central Coalfields Limited. With regard to balance of convenience and inconvenience, this Court finds that both parties have made out an arguable case and it would not be proper to direct the respondent no.1 to secure the entire amount as per the RA Bill and Rs.1,84,02,700/-. How much of the bills raised by the petitioner would be payable or would be just, has to be decided in the arbitration proceeding. It is a fact that the respondent no. 1 is continuing with the contract, meaning thereby, it is also receiving payments on the basis of the invoices and/or bills raised. However, the question of irreparable loss and injury is taken into consideration and it is found that unless some protection is given to the petitioner, the situation may became irreversible by the time the dispute is finally decided by the appropriate forum. The petitioner contends that its machinery is also lying at the site.

Under such circumstances, this Court is inclined to grant protection to the petitioner to the extent that an amount of Rs.3 crores shall be deposited by the respondent no. 1 in a separate interest bearing fixed deposit account for a period of three months. The details of such account shall be furnished to the petitioner. The fixed deposit shall be made within a month from date. Till such time, the respondent no. 1 will not withdraw any amount lying in the joint venture account bearing no. 3336120250000488 of Ujjivan Small Finance Bank Ltd. The bank will ensure that this order in complied with. Once Rs.3 crores as directed by this Court is secured, the respondent no.1 can utilize the sum lying in the Ujjivan Small Finance Bank Ltd. and operate the account. This order will continue for a period of three months. Thereafter, the petitioner will be at liberty to approach the learned Arbitrator for necessary interim protection which will be decided by the learned Arbitrator independently.

AP-COM/815/2024 stands disposed of.

(SHAMPA SARKAR, J.)

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