

ORDER SHEET

AP-COM/870/2024

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

SREI EQUIPMENT FINANCE LIMITED
VS
SUDESH MANAGEMENT SERVICES PVT. LTD. AND ORS.

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date : 7th October, 2024.

Appearance:

Mr. Swatarup Banerjee, Adv.

Mr. Sariful Haque, Adv.

Mr. Rajib Mullick, Adv.

Ms. Sonia Mukherjee, Adv.

...for the petitioner

Mr. Reetobroto Kumar Mitra, Adv.

Mr. Arif Ali, Adv.

Mr. Sayantak Das, Adv.

Mr. Sarban Bhattacharjee, Adv.

...for the respondents

The Court: The present application has been filed under Sections 17(2) and 27 of the Arbitration and Conciliation Act, 1996, apparently in the absence of any other better alternative.

A peculiar situation has arisen, prompting the present application. The parties are undergoing an arbitral proceeding where the learned Arbitrator, by several orders passed repeatedly, appointed the Director, Central Forensic Science Laboratory as the expert in respect of ascertainment of the authenticity of certain signatures in documents.

Despite the learned advocates for the parties carrying out the direction of the learned Arbitrator and approaching the said authority, the said authority nonchalantly flouted such order and initially insisted upon a communication to be made by the Arbitrator himself and thereafter has insisted that an order of the Court be produced for the purpose of carrying out the order of the learned Arbitrator.

Learned counsel for the respondents submits that such insistence of the petitioner on this authority i.e., the Central Forensic Science Laboratory is not understandable, since if the said body did not choose to comply with the order of the Arbitrator, the matter could very well have been taken to some other expert.

However, the said issue cannot be reopened at this stage, since there is an existing and binding order of the learned Arbitrator appointing the Director of the Central Forensic Science Laboratory as the expert in order to carry out the directives of the Tribunal.

Learned counsel for the petitioner is justified in arguing that Section 17(2) of the 1996 Act provides sufficient justification for the order of the Arbitrator himself being enforceable on a similar footing as an order of the Court.

Sub-Section (2) of Section 17 reads as follows:-

“(2) Subject to any orders passed in an appeal under Section 37, any order issued by the arbitral tribunal under this section shall be deemed to be an order of the court for all purposes and shall be enforceable under the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were an order of the court.”

Although, strictly speaking, this is not a scenario under Section 27 of the 1996 Act, since what the petitioner is seeking is rather an implementation of the direction of the Arbitrator and not an order for court assistance in taking evidence, however, this Court chooses to read the language of Section 27 liberally, in order to provide sufficient protection to the arbitral tribunal and its orders.

The Director, Central Forensic Science Laboratory, in the first place, is required to be sensitized, if not otherwise then by this observation, that orders of arbitral tribunals and awards passed by such tribunals under the 1996 Act operate on an equal footing as orders passed by a competent Court.

Section 17(2) ought to have been self-explanatory even before the said authority. However, since the Director, Central Forensic Science Laboratory insisted on a court order, the present order is necessitated.

Section 27 of the 1996 Act provides that the arbitral tribunal or a party with the approval of the arbitral tribunal may apply to the Court for assistance in taking evidence.

The expression “in taking evidence” has to be read in the widest possible fashion so as to give effect to the intention of the legislature in framing Section 27. Assistance can be required in taking evidence in a variety of situations. In the present case, the direction on an expert to ascertain the veracity of signatures comes within the broader context of evidence being led before the arbitral tribunal and, as such, the direction as sought herein tantamounts to assistance to the Tribunal in taking evidence.

Seen from such perspective, it was the incumbent duty of the Director, Central Forensic Science Laboratory to comply with the directive of the arbitral tribunal as if it is an order of a competent Court.

As such, AP-COM/870/2024 is allowed, thereby directing the Director of the Central Forensic Science Laboratory to immediately implement the orders dated June 22, 2024, July 20, 2024 and September 13, 2024 passed by the arbitral tribunal which is taking up the arbitral proceedings between the parties and as annexed to the present application.

It is expected that the said authority i.e., the Director of the Central Forensic Science Laboratory shall carry out the examination of the documents in question in pursuance of the order of the learned arbitral tribunal as expeditiously as possible, preferably within one month from the communication of this order to the Director, Central Forensic Science Laboratory. The parties shall co-operate in this regard by furnishing copies of the relevant orders of the tribunal and the documents to be compared before the said authority at the earliest.

The parties as well as the Director, Central Forensic Science Laboratory shall act on the written communication of the learned advocate of the parties, coupled with a server copy of this order, for the purpose of compliance, without insisting upon prior production of a certified copy of the same.

(SABYASACHI BHATTACHARYYA, J.)