

ORDER SHEET

APOT/366/2024
WITH
AP-COM/809/2024
IA NO: GA-COM/1/2024

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

AL SIFAH MINERALS PRIVATE LIMITED
VERSUS
USHA MARTIN LIMITED

BEFORE:

The Hon'ble JUSTICE SOUMEN SEN

AND

The Hon'ble JUSTICE BISWAROOP CHOWDHURY

Date : 27^h November, 2024.

Appearance:

Mr. Ratul Das, Adv.
Mr. Yash Vardhan Deora, Adv.
Mr. Chunky Agarwal, Adv.
Mr. Ram Maroo, Adv.
...for the appellant

Mr. Chayan Gupta, Adv.
Mr. Souvik Kundu, Adv.
...for the respondent

The Court: The appellant is an award-debtor. The appellant has suffered an interim award of over Rs.1 crore and has unsuccessfully challenged the application filed by the award-holder for enforcement of the award under Section 9(3) of the Arbitration and Conciliation Act.

Mr. Ratul Das, learned counsel appearing on behalf of the appellant submits that the learned Single Judge has clearly erred in exercising its discretionary jurisdiction without taking into consideration that the proper remedies for the appellant would be to file an application under Section 17 for interim measures. It is further submitted that by reason of amendment to the

Arbitration and Conciliation Act on 23rd October, 2015, the arbitral tribunal shall have the same power of making orders as the Court has for the purpose and in relation to any proceedings before it. Mr. Das has relied upon the decision of the Hon'ble Supreme Court in *Arcelor Mittal Nippon Steel India Limited vs. Essar Bulk Terminal Limited* reported in (2022) 1 SCC 712 and submits that in the said decision it has been categorically stated that once the arbitral tribunal is constituted and is in seisin of the disputes between the parties, unless there is some impediment in approaching the arbitral tribunal or the interim relief sought cannot expeditiously be obtained from the arbitral tribunal, only then the Court can entertain an application under Section 9(3) of the Arbitration and Conciliation Act, 1996. Mr. Das has submitted that till today the appellant has not received the signed copy of the award as a result whereof the appellant could not challenge the award. However, learned counsel admits that a copy of the award has been recently sent by email by the respondent/award-holder to the appellant.

Per contra, Mr. Chayan Gupta, learned counsel appearing on behalf of the award-holder submits that from the very beginning the award-debtors have been avoiding the arbitration proceeding and only after the interim award was passed, they filed applications challenging the competence of the tribunal and in such background it became necessary for the appellant to approach the Court under Section 9(3) for enforcement of the award as the award-holder has genuine apprehension that in the event no protective order is passed, as an interim measure, there is every possibility that the award would be rendered nugatory. However, it is submitted that the application under Section 16 of the

Arbitration and Conciliation Act has been recently decided by the arbitral tribunal after the impugned order was passed.

Taking into consideration such changed situation as it exists now, we extend the interim award for a period of four weeks from date with liberty to the award-holder/respondent to approach the arbitral tribunal in terms of Section 17 of the Arbitration and Conciliation Act, 1996 upon prior service to the appellant.

The interim order is modified to the aforesaid extent.

With the aforesaid observations, the appeal and the application are disposed of.

Since nothing remains in the application for interim measure, AP-COM/809/2024 by consent is treated as on the day's list and disposed of by this order.

The Department shall make appropriate endorsement in this regard.

AP-COM/809/2024 shall not be shown as pending any further.

This order shall also be communicated to the Registrar, IT for information.

(SOUMEN SEN, J.)

(BISWAROOP CHOWDHURY, J.)