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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO.3509 OF 2024
IN
ARBITRATION PETITION (L) NO.28143 OF 2024

Hindustan Petroleum Corporation Ltd.

...Applicant /
Petitioner

Versus

Aegis Logistics Pvt. Ltd.

...Respondent

Mr. Shyam Kapadia, Mr. Aayush Tainwala, Mr. Nilesh Modi, Mr. Parantap Mahavedia and Mr. Tejas Bhat i/b. Rustmaji and Ginwala for the Applicant / Petitioner.

Mr. Kunal Dwarkadas, Mr. Areez Gazdar, Ms. Prarthana Balasubramanian and Ms. Sanaya Contractor i/b. M/s. Veritas Legal for the Respondent.

CORAM : R.I. CHAGLA J.

DATE : 12TH DECEMBER, 2024.

ORDER :

1. By this Interim Application, the Applicant / Petitioner has sought a stay on the operation, implementation and execution of the impugned Award 30th May, 2024.

2. Mr. Shayam Kapadia the learned Counsel appearing for

the Petitioner has referred to the decisions of this Court as well as the Supreme Court, wherein it has been laid down that a Court exercises discretion under Section 36(3) of the Arbitration Act as to the quantum of deposit of the awarded amount which is in the nature of the monetary decree. There have been certain cases where 50% of the awarded amount has been directed to be deposited and others where the principle amount is directed to be deposited.

3. This Court has also taken a view in ***Ecopack India Paper Cup Pvt. Ltd. V/s. Sphere International***¹ that upon bare perusal of the provisions of Section 36, it shows that the jurisdiction so conferred on the Court is a discretionary jurisdiction. The proviso to Sub-section (3) further makes it implicit that the provisions of Order 41 Rule 1 Sub-Rule 3 and Rule 5 would become relevant. In exercising powers under Order 41 Rule 5 the Court exercises its discretion and may grant a stay to the execution of a decree if “sufficient cause” is made out.

4. This Court in a recent decision in ***CFM Asset Reconstruction Pvt. Ltd. and Anr. V/s. SAR Parivahan Pvt. Ltd., Thru***

¹ 2018 SCC OnLine Bom 540.

*Its Director Rajesh Gupta and Ors.*² at paragraph 24 has reiterated the view expressed by the Division Bench of this court in *Ecopack India Paper Cup Pvt. Ltd. (Supra)* viz. that it is the discretion of the Court to consider whether to grant a conditional stay or an unconditional stay, even in the case of a monetary decree.

5. The present Interim application has been moved by way of urgency in view of ongoing execution proceedings taken out by the Respondent. The Interim Application along with Arbitration Petition is required to be considered on merits and particularly with regard to the whether there is any cogent ground made out under Section 34 of the Arbitration Act.

6. The Arbitration Petition cannot be heard today. Pending consideration of the Arbitration Petition at the admission stage and hearing of this Interim Application, as and by way of this ad-interim Order, it would be appropriate to exercise discretionary powers under Section 36(3) of the Arbitration Act and direct the Petitioner to deposit the principle amount together with costs.

2 2024 SCC OnLine Bom 1659.

7. Hence, the following ad-interim Order is passed:-

(i) The Petitioner shall deposit the sum of Rs.5,98,63,602/- with the Prothonotary and Senior Master of this Court within a period of six weeks from the date of this Order. Subject to the aforementioned deposit, the operation, implementation and execution of the impugned Award dated 30th May, 2024 is stayed.

(ii) It is made clear that this Order is without prejudice to the rights and contentions of the parties in the Arbitration Petition as well as the Interim Application.

(iii) Further, as this is an ad-interim Order, it would be subject to hearing of the Interim Application along with the Arbitration Petition for admission. The Respondent is at liberty to canvass their case for 100% deposit of the awarded amount which would include interest. Needless to state that, it would also be open for the Petitioner also to contend that, there should be no deposit of the awarded amount including the present deposit which is being made without prejudice to the rights and contentions of the parties.

(iv) The Respondent is at liberty to file an Application for withdrawal of the deposited amount which shall be considered on its own merits.

(v) The Interim Application along with Arbitration Petition shall be placed for consideration on 28th January, 2025.

[R.I. CHAGLA J.]