

OD-6

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
(COMMERCIAL DIVISION)
ORIGINAL SIDE

APOT/33/2025
IA NO: GA-COM/1/2025

M/s. GAYATRI GRANITES AND ANR.
VS
SREI EQUIPMENT FINANCE LIMITED AND ANR.

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date : 17th February, 2025

Appearance :
Mr. Nemani Srinivas, Adv.
Mr. Tirthankar Das, Adv.
... for the applicant.
Mr. Swatarup Banerjee, Adv.
Mr. Suddhasatva Banerjee, Adv.
Mr. Sariful Haque, Adv.
Mr. Rajib Mullick, Adv.
Ms. Shambhavi Jha, Adv.
... for the respondents.

The Court : This is an application for appropriate orders, including stay of the arbitration proceeding.

The petitioner contends that the learned Arbitrator had erred in not hearing the issue of maintainability before proceeding with the matter. According to the petitioner, the issue of maintainability should have been heard first. It is further submitted that at present cross-examination of the respondent has also been closed and to that, an application for recall has been filed.

According to the petitioner, this Court should interfere with the order passed in the application for interim stay of the proceeding. This is an appeal under Section 37 of the Arbitration and Conciliation Act, 1996.

Mr. Swatarup Banerjee, learned Advocate for the respondent, submits that this appeal is not maintainable. The application filed before the learned Arbitrator was to be construed as one under Section 16 of the Arbitration and Conciliation Act 1996. The remedy of the petitioner would be to challenge such order in an application under Section 34 of the Arbitration and Conciliation Act, 1996, after the award published. The petitioner did not make any other interim prayer before the learned Arbitrator for injunction or otherwise. Thus, construing the order impugned as one under Section 17 of the Arbitration and Conciliation Act, 1996, will be erroneous.

The Minutes of the meeting dated January 19, 2024 has been perused. The order impugned is considered. The learned Arbitrator, took note of the respondent's objection as to the maintainability of the proceeding on the ground that the claimant lacked the authorization to pursue the forum in the absence of a valid authorization from the administrator/successful resolution applicant, but did not proceed to hear the said objection and disposed of the same.

The learned Arbitrator held that, the issue of maintainability of the claimant's application and the objections raised by the respondents shall be decided in the main proceeding. The parties were directed to conclude the examination in chief and cross-examination on the next date of hearing.

Aggrieved by the aforementioned decision, this appeal and application has been filed. Prayer has been made for a direction upon the learned Arbitrator, to consider the application filed by the petitioner on the point of maintainability, first. In my opinion, the appeal in its present form is not maintainable. No interim orders were denied to the petitioners, which led to filing of the appeal. Further, I also do not find that any prejudice will be caused to the petitioners, if the maintainability issue is decided as the first issue amongst all the other issues that have been framed in the proceeding.

Under such circumstances, the appeal along with the application is disposed of without any order as to costs.

This order shall not be construed as an opinion on the merits of issues raised by either of the parties.

(SHAMPA SARKAR, J.)