ORDER OCD-23

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

AP-COM/121/2025
CHOLAMANDALAM INVESTMENT AND FINANCE
COMPANY LIMITED
VS
SWAPAN KUMAR MONDAL & ANR

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 20th February, 2025.

Appearance:
Ms. Shrayashee Das, Adv.
Mr. Rohan Kumar Thakaur, Adv.
Mr. Tridibesh Dasgupta, Adv.
... for the award holder

The Court:- This is an application under Section 9 of Arbitration and Conciliation Act, 1996.

The petitioner prays for appointment of a Receiver over and in respect of the assets which have been enlisted in Schedule G. In the alternative, for other interim measures, including an injunction upon the respondents from encumbering, alienating or dealing with those assets.

According to the petitioner, a sum of Rs.17,26,305/- is payable by the respondents, on account of outstanding dues. It appears that the secured asset has already been sold for an amount of Rs.33,90,000/-. The total claim of the petitioner was approximately Rs.50,66,024.00/-.

It is contended by Ms. Das, learned Advocate, that the entire amount due and payable had not been recovered, although the secured asset has been sold.

Under such circumstances, further injunction is required over the other free assets which have been identified by the lender.

The agreement between the parties contains an arbitration clause. The parties have agreed to refer the disputes arising out of the said agreement to arbitration. The provisions of Section 9 allows any party to an arbitration to approach the Court for interim protection either before, during or after the arbitration proceeding. In my view, this is an equitable relief. Balance of convenience, inconvenience and irreparable loss and injury must be weighed. Protection should be given to the lender to the extent that, the secured assets are neither damaged, destroyed nor wasted. That, in case of success in the arbitration proceeding, the sum awarded can be recovered. The whole purpose of this section is to protect the claim of one party from the other party, under a commercial business transaction.

Thus, the Court has to balance convenience and inconvenience of both parties and consider the irreparable loss and injury which the order cause to the parties. An application under Section 9 of the Act cannot be used as a mechanism for recovery of the loan and such mechanism is not contemplated either under the statute or under the contract. It cannot be used as a coercive measure for recovery of the entire alleged claim. The claim is required to be adjudicated. The claim shall be decided in the arbitration. The disputes have to be resolved by a forum selected by the parties, that is, an Arbitrator. Moreover, if any injunction is passed on the other assets, the same shall be detrimental to the respondents. The secured assets have already been sold by the lender and substantial amount has also been recovered by such sale.

Under such circumstances, the Court does not find any reason to pass further interim orders. It is informed to the Court that an Arbitrator, at the instance of the petitioner, has already been engaged. However, whether the respondents will submit to the jurisdiction of the said unilaterally appointed Arbitrator or not, is a question left open to be decided by the appropriate forum, if raised.

The application being AP-COM/121/2025 is, accordingly, disposed of.

(SHAMPA SARKAR, J.)

SN/R.D. Barua