OCD 28

ORDER SHEET
AP-COM/224/2025
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL DIVISION

VIVEK CHAUDHARY
VS
SUPER SMELTERS LIMITED

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 26th March, 2025.

Appearance:
Mr. Ishaan Saha, Adv.
Mr. Supriyo Banerjee, Adv.
…for the petitioner

Mr. Aritra Basu, Adv.
Mr. Ritoban Sarkar, Adv.
Mr. Sourav Sharma, Adv.
…for the respondent

The Court:

1. This is a pre arbitration application under Section 9 of the Arbitration and Conciliation Act, 1996 hereinafter referred to as the said Act.
2. The petitioner contends that a work order was issued on August 5, 2022 for transportation of South African Coal from Haldia Port to the respondent's plant at Jamuria. A consideration of Rs.1000 per MT on a lump sum basis was payable to the petitioner by the respondent.

3. Under Clause 5 of the work order, the respondent was under an obligation to pay the transportation charges within thirty days from receipt of the materials or from the date of submission of the bills along with the receipt of the materials at the respondent's Jamuria plant.
4. Clause 11(g) of the work order provided that after reaching the destination, if the seals were found broken or tampered, the driver and the transporter would be held responsible for the shortage of the materials and twice the amount of shortage of quantity or loss due to variation of the grade of materials, shall be deducted from the bill of the transporter.
5. Clause 12 of the work order provided that the respondent would be at liberty to impose suitable penalty as it deemed fit. If the materials were stolen or the materials were not delivered within five days from the date of leaving of the port, the transporter would be liable to bear the penalty of two times the material value and the respondent would be entitled to deduct the quantum of such penalty from the outstanding bills of the petitioner.
6. It is the specific contention of the petitioner that in terms of Clause 15 of the work order, security deposit of Rs.15,00,000/- had been furnished by way of post dated cheques, but those cheques were never encashed although the respondent had alleged breach of Clause 12.
7. Clause 19 of the work order provided that all disputes and differences arising between the parties would be settled by arbitration.

8. The disputes, according to Mr. Saha, arose with regard to the inferior quality of coal which was delivered at the Jamuria plant of the respondent. The respondent's specific allegation was that the coal was of inferior quality. Accordingly, the penalty was proposed to be imposed. The respondent proposed to adjust the penalty against the pending bills, in respect of the goods delivered by the 115 trucks.
9. Mr. Saha has taken the Court through various documents in support of the contention that the claim of the respondent towards penalty was in the nature of unliquidated damages. The issue as to whether the coal delivered by the four trucks were of inferior quality or not was an arbitrable issue. The breach had to be established. Whether, under such circumstances, the respondent could straightaway adjust the damages calculated by them on the ground of alleged breach by not paying the price of the goods delivered by 115 trucks was also an arbitrable dispute. According to Mr. Saha, the respondent could not have, on its own, adjusted the amount by not paying the bills raised by the petitioner for the goods which were delivered. Moreover, it is contended that the computation of the extent of damages were not supported by any parameter.
10. Mr. Basu, learned advocate for the respondent submits that the petitioner could not show any urgency in moving this application for interim protection. Moreover, the nature of the prayers amounted to orders for attachment. The pleadings do not support the prayers. Several correspondence between the parties have been pointed out to

the Court, in support of the contention that the petitioner had accepted the fact that the quality of coal was inferior and had asked the respondent to intimate the extent of penalty that would be imposed. The petitioner also requested waiver of penalty for some of the vehicles.

11. It is submitted that, the question of granting any interim order does not arise, more so, the claim of the respondent towards penalty, would exceed the claim of the petitioner. According to Mr. Basu, an interim order is passed in aid of the final relief. The petitioner has been unable to establish that it has an unimpeachable claim. The respondent cannot be directed to secure the amount and the assets cannot be attached.

12. Heard the learned advocates for the respective parties.

13. It is not in dispute that there was a business transaction between the parties and an agreement was arrived at, which contains an arbitration clause. The petitioner had delivered coal by 119 trucks. The quality of coal which was unloaded from 115 trucks were not disputed. Part payment was made. According to the petitioner, the total amount payable as per the work order had not been made by the respondent, on the plea that the penalty which the respondent was entitled to impose on account of inferior quality of coal which was delivered by four trucks, would be higher than the outstanding dues. The respondent decided to adjust such penalty against the outstanding bills. The records reveal that security deposit of Rs.15 lakhs by way of post dated cheques had been made by the petitioner. The respondent did not seek to encash

those cheques. The respondent has made a calculation, but the same are not supported by any facts and figures. The fact that the petitioner has approached this Court belatedly, cannot be held to be fatal insofar as, prayer for interim relief is concerned, inasmuch as, it appears that the parties were negotiating on the quantum of penalty and payment of outstanding dues etc. In any event, damages claimed by the respondent on account of alleged breach is an arbitrable issue. The same is yet to be quantified. The respondent's claim for breach, has to be proved by leading evidence. The fact that coals delivered by the 115 trucks were not of inferior quality, is not in dispute. The petitioner's bills against such delivery are yet to be cleared. Moreover, the respondent did not encash the post dated cheques amounting to Rs. 15 lakhs, which were deposited as security, by the petitioner.

14. Thus, the balance of convenience and inconvenience requires that the amount payable to the petitioner against the coals delivered by 115 trucks, should be secured.

15. Accordingly, this Court directs that the respondent shall be at liberty to operate bank account maintained with the Canara Bank, the details of which are quoted below, leaving aside Rs.26 lakhs in the said account.

SUPER SMELTERS LTD.
BANK NAME – CANARA BANK
BRANCH – KOLKATA SHAKESPEARE SARANI, BELLS HOUSE, 21 CAMAC ST., GROUND FLOOR, KOLKATA – 700016
A/C No. – 2560261010500

IFSC – CNRB0002560

16. This order shall continue for a period of three months from date, within which time the petitioner shall invoke arbitration. The branch manager of the concerned bank shall act on the basis of a server copy of this order and shall ensure that the account always maintains a sum of Rs.26 lakhs and the respondent can operate the account over and above the said amount.

17. AP-COM/224/2025 is, accordingly, disposed of.

(SHAMPA SARKAR, J.)

B.Pal/pa