OD-6 & 7

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

APO/79/2024
With
EC/221/2018
IA No.GA/1/2024

BNK SECURITIES PRIVATE LIMITED
VERSUS
URBAN INFRA NIRMAN PRIVATE LIMITED

Wt7

APO/77/2024
IA No.GA/1/2024

BNK SECURITIES PRIVATE LIMITED
VERSUS
URBAN INFRA NIRMAN PRIVATE LIMITED

BEFORE:
The Hon'ble JUSTICE ARIJIT BANERJEE
AND
The Hon'ble JUSTICE OM NARAYAN RAI
Date : 2nd May, 2025.

Appearance:
Mr. Ahin Choudhuri, Sr. Adv.
Mr. Rishad Medora, Adv.
Ms. Ajeyaa Choudhury, Adv.
Mr. D. N. Chunder, Adv.
..for the appellant

Mr. K. R. Thaker, Sr. Adv.
Ms. Noelle Banerjee, Adv.
Mr. Avijit Dey, Adv.
..for the respondent

The Court: This appeal is directed against an order dated March 12, 2024, whereby the application for execution of an arbitral award that was passed in favour of the predecessor-in-interest of the appellant, has been dismissed by a Learned Judge of this Court.

The brief facts are that the predecessor-in-interest of the appellant, a company by the name of Patrex Vyapaar Limited (in short, Patrex) obtained an interim arbitral award and the final award in its favour aggregating approximately Rs.8 crores. The awards were put in execution by filing EC/221/2018 and EC/446/2018.

It appears that by an order dated November 8, 2021, the National Company Law Tribunal (in short, NCLT) sanctioned a scheme of amalgamation of Patrex with the appellant herein. The scheme was made effective from April 1, 2020.

It appears that the aforesaid fact of amalgamation was not brought to the notice of the Court contemporaneously. By the impugned order, the Learned Judge held that not apprising the Court of the order of amalgamation amounts to suppression of material fact and playing fraud on Court. Accordingly, the execution proceedings were summarily dismissed. Hence, these two appeals.

We have heard learned Counsel for the parties.

We are unable to sustain the order challenged before us. We do not see why an award-holder who is trying to execute the award would deliberately suppress the amalgamation order whereby the award-holder has merged with another company. It may be that the factum of amalgamation was not immediately brought to the notice of the learned Single Judge. However, Mr. Choudhuri, learned Senior Advocate representing the appellant points out that even prior to passing of the impugned order, the Learned Judge was apprised of the amalgamation order.

Be that as it may, we are unable to approve the order under appeal. No question of fraud or suppression arises in this case. A lot of time is left before the execution of either the interim award or the final award gets time-barred. The appellant who has stepped into the shoes of Patrex is at liberty to execute the award in accordance with law.

We, therefore, set aside the impugned order. The execution applications therefore stand revived.

We substitute the appellant in the place and stead of Patrex Vyapaar Limited in the execution proceedings. The execution proceedings may continue in accordance with law from the stage which it had reached.

Learned Advocate for the respondent says that its application for setting aside of the awards under Section 34 of the Arbitration and Conciliation Act, 1996 is pending before a Learned Judge of this Court. He submits that the same should be disposed of on an early date. The respondent shall be at liberty to make such prayer before the Learned Judge who is in seisin of the matter.

The department is directed to carry out necessary amendment of the pleadings in the execution proceedings by substituting BNK Securities Private Limited in the place and stead of Patrex Vyapaar Limited within a fortnight from date.

The appeals being APO/79/2024 and APO/77/2024 are disposed of.

(ARIJIT BANERJEE, J.)

(OM NARAYAN RAI, J.)

bp