

AP-COM/352/2025
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL DIVISION

KM PRODUCTS EUROPE LIMITED
VS
VENDITION AGENCIES PVT LTD

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date : 1st May, 2025.

Appearance:

Mr. Soumabho Ghose, Adv.

Mr. Saumalya Ganguli, Adv.

Ms. Tiama Bhattacharya, Adv.

Mr. Abhay Mahajan, Adv.

Mr. Shivam Malhotra, Adv.

. . .for the petitioner.

Mr. Rudraman Bhattacharyya, Sr. Adv.

Mr. Satyaki Mukherjee, Adv.

Ms. Amrita Panja Moulick, Adv.

. . .for the petitioner.

The Court:

1. This is an application under Section 36(2) of the Arbitration and Conciliation Act, 1996. The petitioner prays for stay of the award dated 31st October, 2022, corrected on 18th January 2023. It is submitted that there is an urgent need for grant of stay or else, the award shall be enforced by the High Court of Justice Business and Property Courts of England and Wales London Circuit Commercial Court (KBD), in the execution proceedings instituted by the award holder.
2. Mr. Ghose, learned counsel for the award debtor submits that the delay in filing the application is on account of non-availability of funds in

India and impediments faced in transfer of funds from the UK. It is further submitted that in the interregnum, talks of settlement were also going on.

3. Mr. Bhattacharyya, learned senior advocate appearing for the award holder submits that the conduct of the petitioner should be looked into by the Court. The matter has been fixed on 2nd May, 2025 before the learned executing court at England and necessary orders are likely to be passed for attachment of the assets. According to Mr. Bhattacharyya, once the award has been recognized, this Court should be slow to pass an order of stay of enforcement of the award.
4. Mr. Ghose submits that an application has been filed before the concerned Court, for recall of the order recognizing the award. The said application is pending. It is also submitted that the award debtor has an option to file an application for setting aside the order of the learned executing court dated February 21, 2025.
5. Heard the respective parties. Records reveal that the application for setting aside the award was filed in the Delhi High Court. When the award holder raised an objection with regard to the territorial jurisdiction of the Delhi High Court, the said application was withdrawn. An application for setting aside the award has been filed before this Court. In this application, the willingness of the award holder to secure the awarded sum is available from the pleadings. Filing of an application for setting aside an award does not automatically amount to stay of enforcement of the award. The Court can grant an order of stay of operation of the award in accordance with

the provisions of Sub-section (3) of Section 36, on a separate application made for that purpose. Accordingly, the present application has been filed. Under the law, the petitioner is entitled to pray for such stay. The Court is empowered to grant such stay, on such conditions as the Court deems fit and with reasons in writing.

6. In my opinion, once the law permits the award debtor to challenge an award by filing an appropriate application under Section 34 of the Arbitration and Conciliation Act, 1996, the enforcement of the award should be stayed upon imposing reasonable conditions for compliance by the award debtor. In case the award is satisfied and discharged upon execution thereof, the situation may become irreversible. Even in case of success of the award debtor in getting the award set aside, recovery of the assets already taken over and / or utilized by the award holder, upon execution of the award, will become impossible. This is also not a case where the executing court has already attached the assets.
7. In my view, as the matter has progressed substantially before the learned executing court, the entire awarded sum and accrued interest as calculated by the award holder, should be secured. The same comes to roughly 7.50 crores. The exact calculation is left open, to be decided at the appropriate stage.
8. A bank guarantee of 50% of Rs. 7.50 crores shall be furnished by award debtor, to the satisfaction of the learned Registrar, Original Side, High Court Calcutta, within 8th May, 2025. The remaining 50% shall be secured by way of cash security within 15th May, 2025. The cash

deposit so made, shall be invested in an auto renewable interest bearing fixed deposit in a nationalized bank. The bank guarantee shall be kept renewed from time to time. The enforcement of the award shall remain stayed unconditionally till 8th May, 2025. The same shall continue up to 15th May, 2025, in the event the bank guarantee is furnished as directed above. Upon deposit of the cash component of the security within 15th May, 2025, the stay of enforcement of the award will continue till disposal of the application under Section 34 of the Arbitration and Conciliation Act, 1996.

9. In case of default in either furnishing the bank guarantee or in depositing the cash security, this order shall stand automatically vacated and the award holder can proceed with the execution case, without further reference to this Court.
10. AP-COM 352 of 2025 is according, disposed of.
11. Parties are at liberty to communicate this order to the learned executing court and provide a server copy of this order.
12. Urgent certified website copy of this order, if applied for, be made available to the parties subject to compliance with the requisite formalities.

(SHAMPA SARKAR, J.)