

OCD-49,50,51,52

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

EC /434/2022
DAGCON (INDIA) PRIVATE LIMITED
VS
KOLKATA METROPOLITAN DEVELOPMENT AUTHORITY

AP /742/2022
KOLKATA METROPOLITAN DEVELOPMENT AUTHORITY
(FORMERLY KOLKATA IMPROVEMENT TRUST)
VS
DAGCON (INDIA) PRIVATE LIMITED

AP /745/2022
KOLKATA METROPOLITAN DEVELOPMENT AUTHORITY
(FORMERLY KOLKATA IMPROVEMENT TRUST)
VS
DAGCON (INDIA) PRIVATE LIMITED

AP-COM /942/2024
KOLKATA METROPOLITAN DEVELOPMENT AUTHORITY
(FORMERLY KNOWN AS KOLKATA IMPROVEMENT TRUST)
VS
DAGCON (INDIA) PRIVATE LIMITED

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date: 13th February, 2025.

Mr. Kishore Datta, Sr.Adv.
Mr. Sirsanya Bandopadhyay,
Sr. Standing Counsel
Mr. Avishek Guha, Adv.
Mr. Ankush Majumdar, Adv.
...for KMDA

Mr. Surajit Nath Mitra, Sr. Adv.
Mr. Sankarsan Sarkar, Adv.
Mr. Samriddha Sen, Adv.
Ms. Anshumala Bansal, Adv.
Mr. Richik Chowdhury, Adv.
Mr. Bhargav Varma, Adv.
...for Dagcon (India) Pvt. Ltd.

The Court: Learned Advocate General prays for stay of the award. Mr. Mitra, learned senior advocate opposes such prayer on the ground unless the security is furnished in terms of Section 36(3), the question of stay of the award does not arise and the award-holder should be entitled to proceed with EC 434 of 2022.

AP 745 of 2022 was disposed of by a learned coordinate Bench by an order dated December 13, 2022 directing the award-debtor to put in the sum awarded with the Registrar, Original Side by way of cash deposit within a period of eight weeks from the date of the order. Upon such payment the execution application would remain stayed till the disposal of the Section 34 application. The application for recall of the aforesaid order of His Lordship was filed vide IA GA 1 of 2023. Such application was dismissed as withdrawn on February 16, 2023. IA GA 2 of 2023 was filed by the award-debtor for modification of the order of His Lordship by seeking a set off of the sum awarded on the basis of the orders passed in the proceeding under the Insolvency and Bankruptcy Code. The contention was that the resolution professional had admitted the claim of the award-debtor to the tune of Rs. 80

crores which was the counter-claim in the arbitration proceeding. According to the learned Advocate General, nothing is payable and the award stands discharged. By an order dated April 25, 2023 His Lordship, dismissed the application, inter alia, holding that the arbitral award should be enforced as it stood and the amount awarded should be deposited. The order was carried in appeal vide APO 88 of 2023. The Hon'ble Division Bench passed an interim order for stay of the award till September 1, 2023 in the event a bank guarantee was furnished by that date by the award-debtor. Accordingly, the award-debtor furnished the bank guarantee of Rs. 80 crores to the satisfaction of the Registrar, Original Side, Calcutta. It is submitted that the said bank guarantee is valid till August 28, 2025. The appeal was ultimately dismissed by a judgment dated September 26, 2024, inter alia, holding that the set off claimed by the award-debtor was neither contractual, statutory nor legal. It was at best an insolvency or equitable set off as claimed. The claim of the award-debtor had only been admitted in the proceeding under the IBC when the judgment dated April 25, 2023, was passed by the learned coordinate Bench. The decision of the learned coordinate Bench was upheld. Learned Advocate General submits that when the security in the form of bank guarantee has already been deposited, the question of further deposit would not arise and the execution should automatically remain stayed till the

disposal of the application under Section 34 of the Arbitration and Conciliation Act, 1996.

Mr. Mitra, learned senior advocate for the award-holder submits that the order of the Hon'ble Division Bench upholding the order of the learned Single Judge led to revival of the order dated April 25, 2023. Thus, the question of securing the amount by keeping the bank guarantee, which was deposited on the direction of the Hon'ble Appeal Court at the interim stage renewed, will not be proper security and it will be a violation and/or modification of the order dated April 25, 2023. Further, it is submitted that the order of the Division Bench was challenged by a Special Leave Petition and the Special Leave Petition was rejected on 27th January, 2025.

Having heard the learned advocates for the respective parties, this Court is of the view that upon dismissal of the appeal, the direction of the learned coordinate Bench survives. The award-debtor was directed to deposit the sum by way of cash deposit. The said order was neither valid nor modified by the Appeal Court. Instead, the entire order was upheld. This Court, at this stage, cannot modify the order dated April 25, 2023 which has attained finality.

Under such circumstances, the prayer of the learned Advocate General that the bank guarantee may be directed to be kept renewed immediately and this should be treated as sufficient for stay of the award is not accepted. The bank guarantee is still valid. The award-debtor is required to

comply with the order dated April 25, 2023 as their challenge to the said order has failed upto Hon'ble Apex Court. The award-debtor is entitled to take back/encash the bank guarantee which was deposited in APO 68 of 2023 and deposit the amount of Rs.80 crores by way of cash deposit or the award-debtor may deposit Rs.80 crores in cash with the Registrar, Original Side, Calcutta, and take return of the bank guarantee as the case may be. There will be an unconditional stay of the award for a period of four weeks within which time the deposit as directed hereinabove shall be made. In case of default, the execution case shall proceed. If this order is complied with, the stay shall continue till disposal of the application under Section 34 of the Arbitration and Conciliation Act, 1996.

With the above mentioned direction, AP 745 of 2022 and AP-COM 942 of 2024 stand disposed of. EC 434 of 2022 and AP 742 of 2022 be de-tagged.

AP 742 of 2022 shall be listed immediately upon the department carrying out the necessary registration of the matter in the commercial division. The learned advocate-on-record of the award-debtor shall accordingly take steps.

(SHAMPA SARKAR, J.)

TR/