



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 11889 OF 2024
IN
ARBITRATION APPEAL NO. 38 OF 2024
A/W.
INTERIM APPLICATION NO. 3527 OF 2024
IN
ARBITRATION APPEAL NO. 44 OF 2024
A/W.
INTERIM APPLICATION NO. 11892 OF 2024
IN
ARBITRATION APPEAL NO. 37 OF 2024
A/W.
INTERIM APPLICATION NO. 3528 OF 2024
IN
ARBITRATION APPEAL NO. 39 OF 2024
A/W.
INTERIM APPLICATION NO. 11893 OF 2024
IN
ARBITRATION APPEAL NO. 40 OF 2024

M/s. Shoft Shipyard Pvt. Ltd.

... Applicant

Versus

Goa Shipyard Ltd.

...Respondent

WITH
INTERIM APPLICATION NO. 14149 OF 2024
IN
ARBITRATION APPEAL NO. 44 OF 2024
A/W.
INTERIM APPLICATION NO. 14143 OF 2024
IN
ARBITRATION APPEAL NO. 37 OF 2024
A/W.
INTERIM APPLICATION NO. 14147 OF 2024
IN
ARBITRATION APPEAL NO. 40 OF 2024
A/W.

INTERIM APPLICATION NO. 14145 OF 2024
IN
ARBITRATION APPEAL NO. 39 OF 2024
A/W.
INTERIM APPLICATION NO. 14138 OF 2024
IN
ARBITRATION APPEAL NO. 38 OF 2024

Goa Shipyard Ltd.

... Applicant

Versus

M/s. Shoft Shipyard Pvt. Ltd.

...Respondent

Ms. Ridhi Nyati a/w. Mr. Ashwin Shankar, Ms. Vanshika Jain for the applicant in IA/11889/2024, IA/3527/2024, IA/11892/2024, IA/352/2024, IA/11893/2024 and for the respondent in IA/14149/2024, IA/14143/2024, IA/14147/2024, IA/14145/2024 and IA/14138/2024.

Mr. Soli Cooper, Senior Advocate a/w. Mr. S. Das, Anni Mittal, Ms. Rutu Pawar i/b. Praanya Legal for the respondent in IA/11889/2024, IA/3527/2024, IA/11892/2024, IA/352/2024, IA/11893/2024 and for the applicant in IA/14149/2024, IA/14143/2024, IA/14147/2024, IA/14145/2024 and IA/14138/2024.

CORAM: G. S. KULKARNI &
 ADVAIT M. SETHNA, JJ.
Date : 15 January, 2025

PC:

1. There are five Interim Applications filed by Goa Shipyard Ltd. in the respective Arbitration Appeals filed by it. Also, there are five Interim Applications filed by M/s. Shoft Shipyard Pvt. Ltd. in the Arbitration Appeals. Both the set of appeals were filed under Section 37 of the Arbitration and Conciliation Act (for short “**the Act**”), being cross appeals arising out of ten Section 34 proceedings disposed of by the learned District Judge at Margao,

Goa in five arbitral proceedings.

2. As the reliefs as prayed for in all the Interim Applications filed by M/s. Shoft Shipyard Pvt. Ltd. (for short “**SHOFT**”) are similar, we note to the reliefs in one of the Interim Application no. 11889 of 2024, which reads thus:

“(i) Return of the counter security, namely, Bank Guarantee No. 1000IFIBG200006 dated 05.02.2020 for a sum of INR 1,77,66,163 and Corporate Undertaking dated 06.02.2020 furnished by the applicant/Shoft as a condition precedent for the withdrawal of a sum of INR 3,55,32,326 deposited by the GSL, pending the disposal of the underlying Section 37 Appeal. On the date of such return of counter security, the sum of INR 3,55,32,326 to be deemed adjusted in part satisfaction of the Arbitral Award dated 17.04.2018.

(ii) Release of sums, if any, lying with the Hon’ble Court in the form of interest earned on the sums deposited by petitioner/GSL, prior to the receipt of a Demand Draft for a sum of INR 3,55,32,326 by the applicant/Shoft on 05.03.2020. This amount to be adjusted in part satisfaction of the Arbitral Award dated 17.04.2018.

(iii) Encashment of the Bank Guarantee No. 0411619BG0000083 dated 17.09.2019 submitted by GSL – to the extent the award (including GST) remains unsatisfied.”

3. On the other hand, in five Interim Applications filed by the applicant- Goa Shipyard Ltd., the reliefs as prayed are similar, namely, for withdrawal of the respective bank guarantee(s) furnished by it, in pursuance of the interim order dated 26 June, 2019 passed in the appeals and the modification of such order by subsequent order dated 19 August, 2019 passed by the Division Bench of High of Bombay at Goa. We may refer to both the orders, which reads thus:

“ Order dated 26 June, 2019

1. This appeal under Section 37 of the Arbitration and Conciliation Act, 1996 ('the Act' for short) challenges an order passed by the Principal District Judge, South Goa, Margao in an Arbitration Application under Section 34 of the Act. By the impugned order, the challenge of the appellant to the arbitration award was rejected.
2. Heard learned Senior Counsel for the appellant. The appeal deserves consideration and is accordingly admitted.
3. Learned Senior Counsel for the appellant seeks stay of the order of rejection pending the hearing and final disposal of the appeal.
4. Subject to the appellant depositing in this Court the entire sum awarded in the awards within a period of eight weeks from today, the orders passed by the Principal District Judge, South Goa, Margao in the Arbitration Applications are stayed until further orders. The Civil Applications of the appellants to come up on Board for further orders on 15/07/2019.”

Order dated 19 August, 2019

1. Heard Mr. Cooper, learned Senior Advocate alongwith Mr. S. Das for the Applicant and Mr. Nikhil Pai, learned counsel for the Respondent.
2. In all these Misc. Civil Applications, the Applicant seeks variation in the order dated 26th June, 2019, by which the Applicants were granted interim relief subject to deposit of entire awarded amount within a period of eight weeks.
3. Mr. Cooper points out that the Applicant is Government company functioning through the Ministry of Defence. He submits that the Applicant is willing to deposit the principal amount but seeks variation in so far as the amount of interest and costs is concerned. He submits that in order to secure the amount of interest and costs, the Applicant will furnish a bank guarantee of a Nationalized bank. He submits that it is in the interest of justice that such variation be ordered because otherwise the amounts of the Applicant will languish in this Court without corresponding the benefit to the Respondent.
4. Mr. Nikhil Pai, learned counsel for the Respondent submits that the Respondent had proposed to seek withdrawal of the amounts once the same were deposited in this Court. He submits that the Respondent have been agitating this matter since 2009 and therefore, the Respondent should be permitted to withdraw the amounts once they are deposited by

the Applicant.

5. According to us, the request made by the Applicant, in the peculiar facts and circumstances of the present case, is quite reasonable. The Applicant have no difficulty in depositing the principal amount and further, they seek to secure the amount of interest and costs by furnishing a bank guarantee of a Nationalized bank which will no doubt have to be kept alive until the disposal of the appeal.

6. In so far as the Respondents are concerned, they can always apply for withdrawal of principal amount and such application can then be considered on its own merits and in accordance with law.

7. Accordingly, we modify the order dated 26th June, 2019 and direct the Applicant as a precondition of operation of the interim relief to deposit the principal sum referred to not only on the award made by the Arbitrator but as modified by the District Court, if at all such modification has been ordered. This deposit will have to be made within four weeks from today.

8. In so far as the amounts towards the interest and costs are concerned, the Applicants are permitted to give a bank guarantee of a Nationalized bank in order to secure this amount not only in terms of the award of the Arbitrator but also as modified by the District Court. Such bank guarantee will also have to be furnished within four weeks from today.

9. Besides, we grant liberty to the Respondent to take out appropriate application for withdrawal of amounts, which may be deposited by the Applicant herein. Such application will be considered on its own merits and in accordance with law.

10. We clarify that in case there is any failure to deposit the amount in terms of this order or to furnish the bank guarantee, then, the interim order made by us on 26th June, 2019 will stand vacated without any further reference to this Court. Therefore, if the Applicant wishes to avail the benefits of interim order dated 26th June, 2019, then, it is imperative that the Applicants should adhere to the timeline set out in this order.

11. The Misc. Civil Applications are disposed of in the aforesaid terms. There shall be no order as to costs.

12. All concerned to act on the basis of the authenticated copy of this order.”

4. As the reliefs prayed for in all the Interim Applications filed by Goa Shipyard Ltd. are similar, illustratively we note the reliefs in Interim Application No. 14138 of 2024, which reads thus:

- “a) The Applicant be permitted to withdraw the Bank Guarantee No. 0411619BG000083 dated 17 September, 2019 and renewed on 12 September, 2023 issued by the State Bank of India for an amount of Rs.24,63,81,691/-.
- b) Pass any other order as the Hon’ble Court deems fit and proper.”

5. We have heard Mr. Cooper, learned senior counsel for the applicant-Goa Shipyard Ltd. and Ms. Niyati, learned counsel for the applicant-SHOFT, these parties also being the respondents in these Interim Applications.

6. At the outset, we may observe that in pursuance of the aforesaid interim orders and purely as an interim arrangement, till the disposal of the respective appeals filed by the parties, the Court had passed interim orders as noted by us hereinabove so as to secure the award amount. All the ten Section 37 appeals were disposed of by a common judgment and order dated 26 April, 2024 passed by the Division Bench, in terms of the following operative order:

“61. In the light of the above, it is held as follows:

- a) Commercial Arbitration Appeal Nos.3 of 2024, 4 of 2024 as also Arbitration Appeal Nos.41 of 2024, 42 of 2024 and 43 of 2024 filed by GSL are allowed. The impugned orders passed by the District Court are set aside and the applications filed by SHOFT under Section 34 of the Arbitration Act in these cases are dismissed;
- b) Arbitration Appeal Nos.37 of 2024, 38 of 2024, 39 of

2024, 40 of 2024 and 44 of 2024 filed by GSL are dismissed;

c) Commercial Arbitration Appeal Nos.5 of 2024, 6 of 2024 and 7 of 2024 filed by SHOFT are dismissed;

d) All pending applications stand disposed of with disposal of the aforesaid appeals; and

e) There shall be no order as to costs.”

7. In the context of the reliefs as sought for in the present Interim Applications, the observations made by the Division Bench in paragraph 60 of the judgment are relevant, which need to be noted, which reads thus:

“60. The learned counsel for the parties made submissions before this Court on the question as to whether interest ought to stop running against GSL for the reason that the amounts towards principal were deposited in these appeals, which were withdrawn by SHOFT and that bank guarantees were furnished with respect to the interest payable on the awards. This Court is of the opinion that the said aspect of the matter has nothing to do with challenge to the orders passed by the District Court under Section 34 of the Arbitration Act and they are certainly not concerned with the correctness and otherwise of the arbitral awards passed by the arbitrators. In fact, the said issue would be relevant when execution of the awards is pursued by SHOFT. This is evident from the fact that submissions were made on behalf of the rival parties on the premise that in the event the awards are upheld, the said issue would arise. Therefore, this Court refuses to go into the said aspect of the matter. It is kept open to be agitated by the parties when execution proceedings are pursued in the context of the said arbitral awards. It is also relevant to note that the District Court modified the arbitral awards only in Commercial Arbitration Petition Nos.3 of 2024, 4 of 2024 as also Arbitration Appeal Nos.41 of 2024, 42 of 2024 and 43 of 2024 filed by GSL. In the light of the reasons stated above, only the aforesaid appeals deserve to be allowed. Rest of the appeals filed by GSL deserve to be dismissed; while the appeals filed by SHOFT also deserve to be dismissed for the reasons stated above.”

(emphasis supplied)

8. Thus, the Court in clear terms has observed that the question as to whether the interest ought to stop running against the Goa Shipyard Ltd. for

the reason, that the amounts towards principal sum were deposited in the Court in the appeals, which were withdrawn by SHOFT, as also the bank guarantees being furnished by Goa Shipyard Ltd. qua the interest payable on the awards, were observed to be matters which has nothing to do with the challenge to the orders passed by the District Court as assailed under Section 34 of the Arbitration Act and such issue was not concerned with the correctness of the arbitral awards passed by the arbitrators. The Court categorically observed that these are issues which are relevant to the execution of the awards which was being pursued by SHOFT. The Court therefore clearly refused to go into such aspects of the matter, leaving it open to the parties to agitate the same in the execution proceedings in the context of the arbitral awards.

9. From what has been informed to us by Mr. Cooper that the bank guarantees furnished by Goa Shipyard Ltd. as deposited with the Registry of this Court, in pursuance of the interim orders passed on the appeals, were extended by Goa Shipyard Ltd. till 17 September, 2024, thus, the bank guarantees had remained extended for a period of almost six months after the appeals were decided by the Division Bench and/or the Division Bench becoming functus officio qua the appeals. It is after almost five months of the

disposal of the appeals, the present applications were moved. In the meantime, the bank guarantees had expired/lapsed on 17 September, 2024.

10. The appeals itself being disposed of, there is no question of the Court passing any order that the Court can now permit encashment of the bank guarantees as prayed for in prayer clause (iii) of the Interim Application filed on behalf of SHOFT. Hence, this would be a matter purely in the realm of execution of the awards in relation to any amounts which according to SHOFT have remained to be paid to SHOFT under the award.

11. Insofar as relief no. (i) as prayed in the Interim Applications filed by SHOFT are concerned, it is fairly informed by the learned counsel for SHOFT that the said relief would not survive in view of the previous orders being passed by the Court.

12. Insofar as relief no. (ii) is concerned, we note that the co-ordinate Bench of this Court on 21 October, 2024 had directed the Registry, High Court of Bombay at Goa, to take necessary steps and to indicate the amount of interest lying in the deposit in consonance with prayer clause (ii) of the Interim Applications. We note the said order dated 21 October, 2024, which reads thus:

1. In the reply filed on behalf of the respondent no.1, there is no objection

raised with the grant of relief vide para 19(1) of the interim application. In that view of the matter, the interim application is allowed in terms of prayer Clause (i) which reads as under:-

“Return of the counter security namely, Bank Guarantee No. 1000IFIBG200006 dated 05.02.2020 for a sum of INR 1,77,66,163 and Corporate Undertaking dated 6.02.2020 furnished by the Applicant / Shoft as a condition precedent for the withdrawal of a sum of INR 3,55,32,326 deposited by the GSL, pending the disposal of the underlying Section 37 Appeal. On the date of such return of counter security, the sum of INR 3,55,32,326 to be deemed adjusted in part satisfaction of the Arbitral Award dated 17.04.2018”

The said prayer relates to return of the counter security furnished by the applicant.

2. The Registry at the High Court of Bombay at Goa to take necessary steps. The amount of interest lying in deposit in consonance with prayer Clause (II) of the interim application be indicated by the Registry.
3. List on 26/11/2024 along with Interim Application (L) nos.27218/2024, 27645/2024, 27272/2024, 27219/2024 and 27217/2024.
4. Parties to act on authenticated copy of this order.”

13. Accordingly, a report was received from the Assistant Registrar, High Court of Bombay at Goa indicating the amount of Rs.1,39,373/- as on 28 October, 2023 is lying invested in the Fixed deposit being the amount towards interest. On such backdrop, an order was passed on 10 December, 2024 by a co-ordinate Bench of this Court recording the said fact. In the circumstances, we direct that such amount along with accrued interest be paid to SHOFT by the Registry, High Court of Bombay at Goa. Mr. Cooper would not have any objection. This be complied within one week of the order of this Court being

presented before the Assistant Registrar, High Court of Bombay at Goa.

14. Learned counsel for SHOFT has nonetheless made a submission that it was an obligation on the Goa Shipyard Ltd. to keep the bank guarantee renewed and it ought not to have left to be lapsed in view of the specific wordings as contained in the bank guarantee which is to the effect that “*Whereas the Bank unequivocally undertakes to renew/extend the validity of this bank guarantee from time to time under a request of Goa Shipyard Ltd., and in any event, till the disposal of the appeal under Arbitration Act no. 12/2019 to which the aforesaid order of the Court relates and until an order of the High Court of Bombay at Goa is made discharging this guarantee*”.

15. It is clearly seen from such condition of the bank guarantee that it specifically covers both the situation that the bank guarantee would be kept alive till the disposal of the appeal, which has already taken place on 26 April, 2024 . We have noted the observations of the Division Bench in its judgment in disposing of the appeal in paragraph 60, which in no manner record any contention as urged on behalf of SHOFT that the Bank Guarantees should be kept alive till the disposal of the execution proceedings. In fact the submissions as urged on behalf of SHOFT before us is that the bank guarantees ought to have been kept alive for a further period till disposal of the execution

proceedings that too after the disposal of the appeal, is a contention contrary to the observations of the Court in paragraph 60 of the judgment. We, therefore, reject such contention. We are thus of the clear opinion that the reliefs in terms of prayer clause (iii) cannot be granted to SHOFT. We, however, keep open all the assertions/contention of SHOFT in such context to be pursued in the execution proceedings, in the event SHOFT is of the opinion that certain amounts are still due and payable to it by Goa Shipyard Ltd. This is also the observations of the Division Bench in paragraph 60 of its judgment in the disposal of Section 37 appeals.

16. In terms of the aforesaid observations, we dispose of the Interim Applications filed by SHOFT.

17. Insofar as the Interim Applications filed on behalf of Goa Shipyard Ltd. are concerned, the bank guarantees have already lapsed. When the bank guarantees merely in such state are lying with the Registry of the High Court of Bombay at Goa, no useful purpose would be served to keep the same on the record of the Court when the principal proceedings itself stand disposed of. We, accordingly, direct that the bank guarantees be returned by the Registry to Goa Shipyard Ltd. within a period of two weeks from the presentation of this order.

18. We also clarify that all contentions of Goa Shipyard Ltd. in the execution proceedings are expressly kept open.

19. Interim Applications filed by Goa Shipyard Ltd. also accordingly stand disposed of in the aforesaid terms. No costs.

(ADVAIT M. SETHNA, J.)

(G. S. KULKARNI , J.)