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Arb Appln No. 768 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03-07-2025

CORAM

THE HON'BLE MR JUSTICE ABDUL QUDDHOSE

Arb Appln No. 768 of 2025

Elboil GmbH

Zippelhaus 3, 20457 Hamburg, Germany

..Appellant(s)

Vs

Sakthi Ferro Alloys India Pvt Ltd

18/26, Loganathan Nagar, 2nd Street, Choolaimedu,

Chennai 600 094., Represented by its Directors.

..Respondent(s)

To direct the Respondent to furnish security for the sum of INR 2,62,48,195.72/- in respect of the dues under the Awards by depositing the same with this Honble Court or by furnishing a bank guarantee issued by any nationalized bank having operations within the territorial jurisdiction of this honble court or in such other manner as this Honble Court may deem fit and proper failing which issue an order of attachment of the properties or assets belonging to the Respondent as may be disclosed by the Respondent.

For Appellant(s): M/S.Ashwini Vaidialingam

For Respondent(s): Mr.Arun C.Mohan



ORDER

This application has been filed seeking for a direction to the respondent to furnish security to the extent of the award amount of Rs.2,62,48,195.72/-, pending enforcement of the foreign arbitral award passed in favour of the applicant.

2. The respondent has raised various objections through their counter affidavit filed in this application. They claim that they have never been served with notice in the arbitral proceedings, which culminated in the passing of the foreign arbitral award.

3. The learned counsel for the respondent also drew the attention of this Court to the various correspondences relied upon by the applicant, which were sent by the arbitral tribunal and the applicant, and would submit that none of those correspondences/communications were received by the respondent. According to the respondent, the objections raised by them through their counter affidavit will fall within the parameters prescribed under Section 48 of the Arbitration and Conciliation Act, 1996(in short “the Act”), to enable the respondent to prevent the applicant from seeking enforcement of the foreign arbitral award under Section 49 of the Act from this Court.



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4. Admittedly, the applicant and the respondent had entered into the contract. The applicant is the supplier of fuel oil and the respondent is the purchaser. According to the applicant, certain sums of money are still due and payable by the respondent to the applicant under the contract entered into between the parties. According to the applicant, since the respondent has failed to pay the balance payments, they were constrained to initiate arbitration in accordance with the arbitration clause contained in the contract. According to the applicant, due procedure was followed by the applicant as well as the arbitral tribunal before passing the foreign arbitral award in favour of the applicant against the respondent.

5. The learned counsel for the applicant also drew the attention of this Court to the foreign arbitral award passed in favour of the applicant against the respondent and would submit that sufficient opportunities were granted to the respondent to participate in the arbitration, but, despite the same, the respondent had failed to participate, which culminated in the passing of the foreign arbitral award in favour of the applicant.

6. As seen from the counter affidavit filed before this Court, the respondent has also not disputed that they owe certain sums of money to the



applicant in respect of the supplies effected by the applicant on behalf of the respondent at Malta. Therefore, this Court at this stage is of the considered view that the applicant has made out a prima-facie case for a direction to the respondent to furnish security to the extent of the award amount, i.e., Rs.2,62,48,195.72/-, within the stipulated time to be fixed by this Court.

7. The respondent has also raised an objection with regard to the maintainability of this application on the ground that since the foreign arbitral award has not been challenged by the respondent before the appropriate court in Germany, this application seeking to furnish security, pending enforcement, is not maintainable.

8. The learned counsel for the respondent also drew the attention of this Court to a decision rendered by a Division Bench of this Court in *M/s.Gopuram Enterprises Ltd., Vs. M/s.Intergral Finance Company Ltd. (O.S.A.No.53 of 2021, dated 15.02.2021)*, wherein this Court has held that once an arbitral award has attained finality, an application under Section 9 of the Act is not maintainable. However, on perusal of the said judgment, it is seen that the said ratio pertains to a domestic arbitral award and does not pertain to a foreign arbitral award as in the instant case. In the instant case, the award is yet to



become a decree as per the provisions of Section 49 of the Act. Only when the foreign arbitral award becomes a decree, the applicant will be able to execute the same for realization of the dues as per the foreign arbitral award. Therefore, on a prima-facie consideration, this court is of the considered view that this application is maintainable before this Court.

9. As observed earlier, this Court will have to direct the respondent to furnish security for the awarded amount. Adequate averments have been made in the affidavit filed in support of this application that the respondent is indebted to various creditors and the applicant has also stated that proceedings have been initiated against the respondent before NCLT under the Companies Act in respect of the alleged fraud said to have been committed by the respondent. Adequate averments have also been made by the applicant that the respondent is attempting to alienate/encumber their assets to deprive the legitimate claim of the various creditors including the applicant.

10. For the foregoing reasons, this Court directs the respondent to furnish security to the extent of the award amount of Rs.2,62,48,195.72/- within a period of six weeks from the date of receipt of a copy of this order. With the above direction, this application is disposed off.



Post the matter for reporting compliance on 22.08.2025.

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Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

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ABDUL QUDDHOSE, J.

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