IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
COMMERCIAL DIVISION
APPELLATE SIDE

Present:
The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Md. Shabbar Rashidi

AO-COM 36 of 2025
with
IA No.: CAN 1 of 2025
with
IA No.: CAN 2 of 2025

Eastern Coalfields Limited
Vs.
Ahome Consultants Private Limited

For the Appellant : Mr. Debnath Ghosh, Ld. Sr. Advocate
Mr. Anil Kr. Dhar, Advocate
Mr. Debabrata Das, Advocate
Mr. Aman Agarwal, Advocate
Mr. S. Mukherjee, Advocate
Mr. A. Sarkar, Advocate
For the Respondent : Mr. Sabyasachi Choudhury, Ld. Sr. Advocate
Mr. Rajarshi Dutta, Advocate
Mr. R. Agarwal, Advocate
Mr. S. Choudhury, Advocate

Hearing & Judgment on : **April 2, 2026**

DEBANGSU BASAK, J.:-

1. Appeal is directed against the order dated July 22, 2025 passed by the learned Judge, Commercial Court, Asansol in Miscellaneous Arbitration (Commercial) No.06/2025.

2. By the impugned order passed under Section 9 of the Arbitration and Conciliation Act, 1996, learned Judge injuncted the appellant before us from giving further effect to the letters dated March 13, 2025 and March 21, 2025 and also directed the appellant to release payments in respect of other pending bills of the respondent after verifying the bills in the manner as prescribed under Clause 8 of the General Terms and Conditions of the contract till such time as the Arbitral Tribunal is constituted and the Arbitral Tribunal hears the matter.
3. Learned Senior Advocate appearing for the appellant submits that, the parties entered into a contract by which, the respondent was required to set up a plant for supply of sand after removing the same from the overburdened. He submits that, from time to time, respondent raised several bills. Some of the bills were paid. In course of the contract, appellant discovered certain illegalities in the execution of the contract. Appellant lodged a complaint to the Central Bureau of Investigation against the employees involved. Investigations are pending.
4. Learned Senior Advocate appearing for the appellant submits that, given the tenor of the impugned order, the same tantamounts to grant of final relief in the arbitration. He submits that, apart from the demand notices being stayed by the learned Judge, mandatory directions upon the appellant to pay the remaining bills of the respondent were passed. He submits that, once all payment are made then, the appellant will not be in a position to recover any amount from the respondent. According to

him, respondent received payments which the respondent was not entitled to, in connivance with the employees of the appellant.

5. Learned Senior Advocate appearing for the respondent draws the attention of the Court to the contract in question. He draws the attention of the Court to the several correspondences exchanged between the parties. He submits that, apart from the first three bills, there can be no dispute with regard to the others.

6. In response to the query of the Court, learned Senior Advocate appearing for the respondent submits that, in aggregate 15 running account bills were submitted by his client along with 19 supplementary bills.

7. Learned Senior Advocate appearing for the respondent submits that, the appellant is not prejudiced in the event, the impugned order is given effect to. He submits that, there is a bank guarantee of about Rs.47 lakhs lying in favour of the appellant. Under the terms of the contract, appellant is entitled to retain 5 per cent out of the billed amount. Therefore, the claim of the appellant stands secured.

8. Learned Senior Advocate appearing for the respondent submits that, in the event, the appellant does not release the other running accounts bills over which, there is no dispute then, the functioning of the respondent will come to a standstill.

9. In response to a query of the Court, learned Senior Advocate appearing for the respondent, on instructions, submits that, the plant is presently not functioning since, the appellant disconnected electric supply thereto.

He submits that, electricity is an essential component for operation of the plant.

10. We find from the records that, the parties entered into a contract for commercial exploitation of the overburden in the coal mine of the appellant. Under the contract, the respondent was to establish a plant for removing the sand from the overburden and supplying such sand to the appellant at an agreed price. Apparently, the parties were acting in terms of the contract. Respondent sold and delivered various quantity of sand to the appellant.

11. There are disputes as to the quantum of sand delivered. According to the appellant, the quantity supplied, was wrongly recorded in connivance with a section of the employees of the appellant for which a complaint to the Central Bureau of Investigation was made. According to the respondent, there was no such connivance. In fact, it was by reason of the pressure exerted by vested interest that the employees of the appellant were singled out. A case of alleged misconduct was sought to be made out.

12. There are disputes and differences between the parties relating to the execution of the contract. The parties are presently before the Arbitrator. Court is informed that the Arbitrator invited pleadings from the parties.

13. The disputes and differences between the parties under the contract, therefore, are yet to be finally decided in the arbitration. Without a final adjudication of such disputes and differences, it is not possible to arrive

at a conclusive finding as to the liabilities of the respective parties. The view of the appellant also requires consideration. The show-causes notices and the demand notices issued by the appellant are subject-matters of the arbitration.

14. Since, we are not in a position to quantify the respective liabilities of the parties and since the respondent received a substantial sum of money from the appellant and since there are bills of the respondent pending with the appellant, in our view, it would be appropriate to pass orders securing the subject-matter of the arbitration.

15. In such circumstances, we modify the impugned order by vacating the stay on the two demand notices issued by the appellant. We hasten to add that, the issue of demand which is a subject-matter in the arbitration, will be decided therein.

16. The appellant claims that the respondent received a sum of Rs.3.38 crores wrongfully. Therefore, respondent will set apart that sum of Rs.3.38 crores in a fixed deposit upon any nationalized bank of its choice and bearing interest. Respondent will create a fixed deposit of the amount that the respondent received from the appellant towards part payment of its bills. Such fixed deposit may be created within four weeks from date with any nationalized bank of the choice of the respondent. Such fixed deposit shall be renewed from time to time subject to any orders passed by the learned Arbitrator**.** A copy of the fixed deposit so

created by the respondent will be made over by the Advocate-on-record for the respondent to the Advocate-on-record for the appellant.

17. So far as the pending running accounts bills and the supplementary bills are concerned, appellant will create a fixed deposit of the sum involved therein within four weeks from date with any nationalized bank of its choice. Likewise, the Advocate-on-record of the appellant will also inform the Advocate-on-record of the respondent as to the creation of such fixed deposit.

18. We clarify that we did not enter into the rival contentions of the parties on the merits of the disputes. Our observations and enquiry are limited to the interim order that is required to be passed. We clarify that these findings are *prima facie* in nature and will not bind or prejudice any of the parties to the arbitration proceedings.

19. The fixed deposits created in terms of this order together with the interest accrued thereon will abide by the result of the arbitration proceeding.

20. **AO-COM 36 of 2025** along with connected applications is disposed of without any order as to costs.

(Debangsu Basak, J.)

21. I agree.

(AD) **(Md. Shabbar Rashidi, J.)**