

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE
(Commercial Division)

IA NO. GA-COM/1/2024
In
APOT/296/2024

BHUBANESHWARI SEAFOOD PRIVATE LIMITED AND ANR.
Vs
UGRO CAPITAL LIMITED

BEFORE :
THE HON'BLE JUSTICE SABYASACHI BHATTACHARYYA
Date : 19th August, 2024

Appearance:

Mr. Jishnu Chowdhury, Adv.
Mr. Abhidipto Tarafdar, Adv.
Mr. S.K. Singhi, Adv.
Ms. Riti Basu, Adv.
Ms. Piyali Pan, Adv.
. . .for the appellant/petitioner.

Mr. P. Sinha, Adv.
Mr. Ritoban Sarkar, Adv.
Mr. K.K. Pandey, Adv.
. . .for the respondent.

The Court : The matter is being taken out of turn, upon being mentioned by the petitioner on the ground of urgency.

It is submitted by learned counsel for the petitioner that the petitioner, being the respondent in a purported arbitral proceeding, has taken out the present application under Section 37 of the Arbitration & Conciliation Act, 1996 against an interim order of attachment of all bank accounts of the petitioner. It is contended that the petitioner has also taken out a separate application under Section 14 of the 1996 Act, which is not appearing in the list

today, where the petitioner has taken an exception to the jurisdiction of the purported arbitral tribunal itself.

Learned counsel for the petitioner contends that although the dispute resolution clause in the agreement between the parties, that is, Clause 23, contemplates resolution by arbitration before an independent Dispute Redressal Institution duly recognized by the Government of India, in view of the seat and venue of arbitration being confined to Kolkata in the self-same clause, the said provision has to be read in proper perspective. It is submitted that there being no independent Government-recognized Dispute Redressal Institution within the contemplation of the 1996 Act in Kolkata, it was for the respondent herein (the claimant) to move this Court under Section 11 of the 1996 Act, since the petitioner refused to agree to the appointment of one SAMA, a purported Institution which was to appoint Arbitrator from its panel. It is argued that, even apart from the fact that the said institution did not have any authority to take up the arbitration, fact remains that by the impugned order, the entire bank accounts of the petitioner has been attached, which is beyond the claim in the arbitral proceeding itself. Also, it has not been quantified as to the total amount lying in the said accounts prior to passing the impugned order.

Learned counsel appearing for the respondent (claimant before the tribunal) contends that SAMA is an independent Dispute Redressal Institution which is duly recognized by the Government of India. The said institution, it is argued, is of considerable repute and has on its panel about 500 arbitrators.

Since a question as to jurisdiction has been raised by the present petitioner, it is contended by the claimant/respondent that the petitioner had

to take up such issue as an objection before the tribunal itself as per the *kompetenz-kompetenz* principle as embodied in Section 16 of the 1996 Act.

The subject-matter of consideration in the present challenge is primarily whether the claimant/respondent was justified in referring the matter to the said institution by the name of SAMA for appointment of arbitrator in the first place.

As per the present petitioner, the said institution is an interloper, not being an independent Dispute Redressal Institution duly recognized by the Government of India and, as such, the appropriate procedure applicable would be either to take out an application under Section 11 or under Section 14 of the 1996 Act, which has not been resorted to by the respondent.

The question of approaching the arbitrator under Section 16 of the 1996 Act arguably arises only if there is a semblance of legitimacy in the appointment of the arbitrator.

As it prime facie appears from the facts of the case, judicial notice is taken of the fact that there is no independent Dispute Redressal Institution duly recognized by the Government of India in Kolkata, within the contemplation of the 1996 Act. Thus, this is a fit case where the present respondent prime facie ought to have approached this Court, in view of disagreement between the parties, under Section 11 of the 1996 Act for appointment of the arbitral tribunal itself.

It would be absurd to relegate the present petitioner to the self-same authority, which prima facie did not have jurisdiction within the statute, even if the *kompetenz-kompetenz* principle is embodied in Section 16 of the 1996 Act.

Insofar as the prima facie case regarding the impugned order is concerned, it is palpable that the tribunal acted beyond its jurisdiction in

attaching all the bank accounts of the petitioner in a blanket fashion, without quantifying the total amounts lying in the said accounts and/or without making further observations or applying relevant tests regarding the claimant/respondent having a strong prima facie case for making out a case for attachment.

However, in the facts and circumstances of the case, since a prima facie opinion has been arrived at by the tribunal, also keeping in balance the interest of the claimant/respondent, it would only be appropriate if at the present juncture, the impugned order of attachment is restricted to the purportedly admitted claim, that is, to the tune of Rs.36,29,860/-.

Accordingly, there shall be a stay of operation of the impugned order to the effect that the bank accounts of the petitioner shall remain attached to the extent of Rs.36,29,860/- for a period of four weeks or until further order, whichever is earlier. Moreover, the arbitral tribunal shall remain restrained from passing any final award, also for a period of four weeks or until further order, whichever is earlier.

The present application, along with AP-COM/777/2024, shall next be listed on September 4, 2024 for passing further orders.

The respondent shall file affidavit-in-opposition to APOT/296/2024 within ten days from date; reply thereto, if any, shall be filed within three days thereafter.

(SABYASACHI BHATTACHARYYA, J.)