

**Calcutta High Court**  
**In the Circuit Bench at Jalpaiguri**

**CAN 1 of 2019**  
**In**  
**FMAT 20 of 2019**

**Mr. Joyjit Choudhury,**  
**Mr. Avrojoyti Das,**  
**Mr. Rohit Agarwal,**  
**Mr. Ajay Singhal** **....for the Appellant.**

**Mr. Sudipto Mazumdar,** **...for the Respondents.**

Affidavit-of-service filed by the appellant in  
Court is kept with the record.

This appeal is arising out of an order passed by the learned District Judge on 19<sup>th</sup> July, 2019 in connection with an application filed under Section 9 of the Arbitration and Conciliation Act, 1996. The District Judge passed an ex parte ad-interim order by which the petitioner was directed to deposit a sum of Rs.84,08,000/- on or before 25<sup>th</sup> July, 2019 as a condition precedent for the Stay of Termination of Contract dated 12<sup>th</sup> July, 2019.

The ex parte ad-interim order is under challenge before us.

We feel that the learned District Judge wanted to test the solvency of the petitioner, having regard to the past conduct of the petitioner in not depositing the amount as directed by the Airports Authority of India. It appears

that twice the petitioner had asked for extension but each time it had failed to deposit the amount.

The appeal was preferred before 22<sup>nd</sup> July, 2019 and the matter could not be taken up before this date.

The learned Counsel for the appellant has submitted that the amount demanded by the authorities is not due and payable by the appellant. However, we find from record that at least on two occasions, the appellant had agreed to deposit a sum of Rs.84,08,000/-. On 10<sup>th</sup> July, 2019, the appellant in its communication to the Regional Executive Director, Eastern Region, Airports Authority of India in response to the demand made upon it by the Airports Authority vide letter dated 3<sup>rd</sup> July, 2019 had requested for extension of time till 10<sup>th</sup> August, 2019 for submitting a Bank Guarantee for Rs.84,08,000/-. This, however, was not accepted by the Airports Authority of India and due to non-submission of the said amount, the Airports Authority had cancelled the agreement on 12<sup>th</sup> July, 2019.

At the interim stage, in our view, the Court is required to find out whether the appellant is able to make out a prima facie case and the balance of convenience is in favour of passing some protective order in favour of the appellant since the refusal to pass any such order might

visit the appellant with irretrievable prejudice and other consequences. The appellant having evinced an intention to deposit a sum of Rs.84,08,000/- in the form of Bank Guarantee till 10<sup>th</sup> August, 2019 and the said prayer apparently not being considered by the Airports Authority in the letter of termination, we want to give an opportunity to the appellant to deposit the remaining balance of Rs.84,08,000/- on or before 31<sup>st</sup> July, 2019. The liability to submit security deposit of Rs.84,08,000/- in the form of Bank Guarantee is not disputed by the appellant. The appellant had cited adverse market conditions as the ground for delay in furnishing the bank guarantee.

On the facts and circumstances of this case, we do not find that the learned District Judge has exercised its jurisdiction arbitrarily and wanted to really find out the financial capability of the appellant to continue with the contract. The learned District Judge directed to payment of Rs.84,08,000/- by way of bank draft or banker's cheque on or before 25<sup>th</sup> July, 2019. Since the appeal was pending and being heard today only in the interests of justice, we extend the time to furnish the banker's cheque or the bank draft for Rs.84,08,000/- in favour of the Airports Authority of India on or before 31<sup>st</sup> July, 2019. There shall, however, be an unconditional stay

on the letter of termination till 31<sup>st</sup> July, 2019. In default, the interim order shall stand automatically vacated. In the event, the appellant deposits the said amount of Rs.84,08,000/-, the letter of termination should not be given effect to for a period of six weeks from 31<sup>st</sup> July, 2019 subject to any order that may be passed by the learned District Judge on the returnable date. The learned District Judge would be entitled to extend the interim order beyond 31<sup>st</sup> July, 2019 if he feels it is necessary for reasons to be recorded by him for such extension. We request the learned District Judge to dispose of the application as expeditiously as possible without granting any unnecessary adjournment to either of the parties.

The respondents are represented by Mr. Sudipto Mazumdar, Advocate. A copy of the application under Section 9 shall be served upon him in course of this week.

The respondents Authority shall file reply to the show-cause within 10 days from date of service of the application upon Mr. Mazumdar. The said direction is peremptory. The learned District Judge is requested to consider the said reply immediately thereafter on a date to be fixed by the learned District Judge according to his convenience and decide the matter uninfluenced by any

observation made by us in this order.

Since no affidavit-in-opposition is called for, the allegations made in the stay application are deemed to have been denied and disputed.

The learned Counsel for the appellant has drawn our attention to the notice dated 18<sup>th</sup> July, 2019 by which the respondents Authority were requested to constitute an arbitral tribunal. We direct the Authority concerned to take immediate steps for constitution of the arbitral tribunal in terms of the notice dated 18<sup>th</sup> July, 2019 and communicate its decision to the appellant.

The appeal and the connected application stand disposed of.

***(Soumen Sen, J.)***

***(Ravi Krishan Kapur, J.)***