

(2018) 12 CAL CK 0070
In the Calcutta High Court

Case No : General Application No. 3053 Of 2018, Arbitration Petition No. 785 Of 2018

National Insurance Company Limited

APPELLANT

Vs

La Opala Rg Limited

RESPONDENT

Date of Decision : 18-12-2018

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 31(5), 34, 36(2), 36(3)

Citation : (2018) 12 CAL CK 0070

Hon'ble Judges : Ashis Kumar Chakraborty, J

Bench : Single Bench

Advocate : Anindya Kumar Mitra, Debjyoti Dutt, Supriya Dubey, Adil Rashid, K. K. Bandopadhyay, D. Mallick

Final Decision : Disposed Off

Judgement

The Court : This is an application under Section 34 of the Arbitration and Conciliation Act, 1996, as amended by Act 3 of 2016 (in short, 'the Act of 1996') for setting aside of the award dated July 9, 2018 made by the sole Arbitrator. The petitioner in this application is an insurance company against whom the impugned award has been made for payment of Rs.2,44,42,047/- to the present respondent, the claimant in the arbitration proceeding.

This application for setting aside of the impugned award dated July 9, 2018 has been filed by the petitioner on October 12, 2018. The petitioner claims that the Arbitrator has not served copies of the award to either of the parties to the arbitration as mandatorily required under Section 31(5) of the Act of 1996. The petitioner further claims to have received a copy of the award from the Advocate who represented it before the Arbitrator.

The petitioner has filed a supplementary affidavit stating some new grounds of challenge to the arbitral award. An objection was raised on behalf of the respondent, the claimant-award holder, to the acceptance of such supplementary

affidavit on the score that the additional grounds urged by the petitioner to challenge the impugned arbitral award is barred by limitation.

On November 27, 2018, an opportunity was granted to the respondent to file its affidavit-in-opposition to this application as well as supplementary affidavit within a week from date and the matter was fixed for hearing today. The respondent, however, has not filed any affidavit-in-opposition. Mr. Mullick, learned Advocate appearing for the respondent, submitted that the Arbitrator did not serve copies of the award on either of the parties. Thus, in view of the decision of the Supreme Court in the cases of *State of Maharashtra & Ors. vs. ARK Builders Private Limited*, reported in (2011) 4 SCC 616 and *Benarsi Krishna Committee & Ors. vs. Karmyogi Shelters Private Limited*, reported in (2012) 9 SCC 496, when it is evident that the Arbitrator has failed to comply with the mandatory condition of service of the arbitral award on the parties to the arbitration stipulated under Section 31(5) of the Act of 1996 the time to file this application under Section 34 of the Act of 1996 has not yet expired. The grounds urged by the petitioner in its supplementary affidavit to challenge the award are not barred by limitation. Consequently, I find substance in the contention raised by the petitioner that the grounds urged by it in the supplementary affidavit cannot be held to be time barred.

For the reasons as aforesaid, the application, AP No.785 of 2018, is admitted and the grounds urged by the petitioner in the supplementary affidavit are accepted as the grounds of challenge to the arbitral award.

Let the application, AP No.785 of 2018, appear for hearing in the monthly list of March, 2019.

RE: GA No.3053 of 2018

In this application under Section 36(2) of the Arbitration and Conciliation Act, 1996, the petitioner-insurance company has prayed for stay of operation of the award dated July 9, 2018 passed by the Arbitrator directing it to pay Rs.2,44,42,047/- to the present respondent, the claimant in the arbitration proceeding.

In view of the mandatory provisions contained in the Proviso to sub-section (3) of Section 36 of the Act of 1996, subject to the deposit of a demand draft of Rs.1.25 crore and furnishing of a bank guarantee of the balance awarded amount with the Registrar, Original Side of this Court within January 10, 2019, there shall be stay of operation of the impugned arbitral award dated July 9, 2018, until disposal of the application, A.P. No. 785 of 2018.

There shall be unconditional stay of operation of impugned arbitral award till January 10, 2018.

It is, however, made clear that in the event the petitioner failing to either deposit the demand draft or furnishing the bank guarantee as directed above, the respondent will be free to execute the arbitral award. If the petitioner deposits

the demand draft as directed above, the Registrar, Original Side shall encash the same and proceeds thereof shall be invested in a short term fixed deposit to be maintained with the United Bank of India, High Court Branch. Needless to mention, the petitioner shall keep the bank guarantee renewed from time to time till the disposal of the application, AP No.785 of 2018.

With the above direction, GA No.3053 of 2018 is disposed of without any order as to costs.