(2021) 07 CAL CK 0064

In the Calcutta High Court

Case No : Arbitration Petition No. 299 Of 2021

Srei Equipment Finance Limited — APPELLANT

Vs

Marg Limited — RESPONDENT

Date of Decision : 26-07-2021

Acts Referred:
Arbitration And Conciliation Act, 1996 — Section 9, 9(1)(e), 34, 36, 36(1)

Citation : (2021) 07 CAL CK 0064

Hon'ble Judges : Moushumi Bhattacharya, J

Bench : Single Bench

Advocate : Swatarup Banerjee, Paritosh Sinha, Saubhik Chowdhury, Dripto Majumdar, Ayusmita Sinha, Rohit Das, Kishwar Rahman

Final Decision : Allowed

Judgement

This is an application filed by the Award-Holder under Section 9 of The Arbitration and Conciliation Act, 1996. The interim protection sought for in the

application is for a direction on the Receiver to sell a certain number of shares of a company in which the Award-Debtor is a shareholder.

Learned counsel seeks such an order in the particular background of this matter wherein an order had been passed by a learned single Judge on 9th

June, 2021 in an execution petition filed by the petitioner herein directing that the Receiver shall remain in possession of the said shares which shall

remain in force until final orders are passed in the execution application. The said matter was thereafter heard by this Court whereby this Court was

of the view that the execution petition was premature in view of the orders of the Supreme Court in a suo motu writ petition taking into consideration

the plight of litigants during the pandemic. By the order dated 30th June, 2021, the application of the Award-Debtor was disposed of with a direction on the Award-Debtor to take appropriate steps within 10 days from the date of the order and to go before the learned Judge for recalling the order if

the Award-Debtor so desired. The order dated 30th June, 2021 was passed in an application filed by the Award-Debtor for recalling the order of the

learned single Judge dated 9th June, 2021.

Learned counsel appearing for the petitioner submits that the Award-Debtor/ respondent has not taken any steps pursuant to the direction of this

Court, i.e., applied for recalling of the order of the learned single Judge or filing an application for setting aside of the Award as provided under Section

36(1) of the Act. It is submitted that since the respondent has failed to act in terms of the liberty given by this Court, there is no remaining embargo on

the petitioner to seek appropriate orders under Section 9 in aid of the Award dated 31st August, 2020.

Learned counsel appearing for the respondent/ Award-Debtor submits that permitting sale of the shares amounts to execution of the Award and will

not be in the nature of interim relief as contemplated under Section 9 of the Act. Counsel offers to keep the shares in the custody of the Receiver and

not take any further steps in relation to the same.

Upon hearing learned counsel appearing for the parties, this Court is of the view that the Award-Debtor has been given sufficient opportunity to take

steps under the provisions of the Act, more particularly Section 36 thereof, for resisting the effect of the Award. Admittedly, the respondent has not

done so. Section 9 of the Act provides a wide berth to a party even after an Award has been made for the sake of protecting the party in the

interregnum. Section 9(1)(e) couches the spectrum of possible interim measures in the language â??â?¦such other interim measure of protection as

may appear to the Court to be just and convenient.â? It is clear, therefore, that the Court has discretion to make an order as it deems fit under the

particular circumstances of the case before it.

In the facts of this case, the petitioner was turned away on 30th June, 2021 since the Court was of the view that the time to file Section 34 petition had

not arrived. The Award-Debtor was given a chance therefore to take appropriate steps. As already stated above, there is no further restraint which

this Court should take into consideration for protecting the Award-Debtor any further.

The Award in question is for a sum of Rs.17,12,98,871/-. The amount at present as computed in the petition is of Rs.27,27,69,044/-which includes

interest payable at various periods of time. Admittedly, the sale of 4,73,97,530 shares of Karaikal Port Private Limited of which the respondent is a

shareholder would translate to about Rs.4.5 crores. Therefore, it cannot be said that allowing sale of the shares would amount to execution of the

award. This Court is also of the view that the interests of the parties would be sufficiently protected if the sale of the shares is supervised by the

Court.

In view of the above, AP No. 299 of 2021 is allowed in terms of prayer (a). The Receiver, who has already been appointed in this matter by an earlier

order, is permitted to sell the number of shares as indicated in prayer (a) of the petition in dematerialized form. The offers received for sale of the

shares shall be brought to Court and the confirmation of the sale shall be done by Court which would ensure that the sale is conducted in a transparent

manner.

List this matter after three weeks to permit the Receiver to take appropriate steps for sale of the shares. The Receiver shall come back with the

information on the returnable date.

The Receiver shall be given remuneration of Rs.30,000/- which is to be borne by the petitioner.