

(2018) 05 CAL CK 0016
In the Calcutta High Court
Case No : AP 1074 OF 2017

SREI EQUIPMENT FINANCE LTD.

APPELLANT

Vs

ANEES AHAMED KHAN & ORS.

RESPONDENT

Date of Decision : 17-05-2018

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 9

Citation : (2018) 05 CAL CK 0016

Hon'ble Judges : MOUSHUMI BHATTACHARYA J

Bench : Single Bench

Advocate : Swatarup Banerjee, Debdulal Halder

Final Decision : Disposed Off

Judgement

The Court : The petitioner has filed this application under Section 9 of the Arbitration and Conciliation Act, 1996 (The Act) for inter-alia appointment

of a Receiver over and in respect of the assets which the petitioner had leased out to the respondents. The petitioner states that seven excavators had

been leased out to the respondents in December, 2014 under two Master Lease Agreements dated 24th December, 2014. Under the said Master

Lease Agreements, the terms of repayment of the lease rentals by the respondents to the petitioner were provided for and the respondents agreed to

pay Rs.6,78,30,000/- and Rs.12,27,71,250/- being the total amounts payable under the two agreements.

Mr. Swatarup Banerjee, Counsel appearing for the petitioner states that the respondents have paid 7 out of 45 agreed lease rentals which were agreed

to be paid by the respondents under the Master Lease Agreements. However, no payments have been paid by the respondents or received by the

petitioner after July, 2017. It is submitted that the petitioner did not take any

steps immediately thereafter, since the parties were negotiating with regard to the amounts payable by the respondents. However, since nothing came out of the negotiation, the petitioners were constrained to file the instant application in December, 2017.

Counsel submits that urgent orders are called for in view of the agreements which have been entered into between the respondents and Western Coal

Fields Limited for transportation of coal where equipments of the nature which have been leased out by the petitioner would in all probability be made

use of by the respondents. Counsel further submits it has recently come to his knowledge that disputes have arisen between the respondents and

Western Coal Fields and hence, there is every possibility that the excavators leased out by the petitioner will be attached or encumbered.

In view of the aforesaid, the petitioner seeks some protection so that the assets leased out cannot be dealt with or taken charge of by Western Coal

Fields who is not a party to the Arbitration Agreement entered into between the petitioner and the respondents.

Having regard to the submissions made by Counsel, there is sufficient urgency for orders to be passed in this application under Section 9 of the Act

which provides for preservation and protection of the assets in question. Counsel fairly submits that he is not seeking immediate possession of the

assets, but for appointment of a Receiver over the seven assets which are presently in the custody of the respondents, so that the said assets cannot

be disposed of by the respondents. The said prayer is granted.

Mr. Shyamsundar Mukherjee, Bar Association, Room No. 2 is appointed Receiver to visit the respondents's factory at Pench, Madhya Pradesh for

taking physical possession of the seven assets described in prayer (a) of the application and for keeping the same at a secured place which the

Receiver may consider fit and to make inventory in relation to the condition of the assets in question. The Receiver will be entitled to seek police help

at Pench as may be required.

The petitioner will bear the remuneration of the Receiver which is fixed at Rs. 50,000/- together with all incidental expenses which may be incurred

for such visit. The Receiver is directed to file his report on the reopening date i.e. on 4th June, 2018 before the Regular Bench.