(2009) 05 DEL CK 0053

In the Delhi High Court

Case No : OMP No. 678 of 2008

Sterling and Wilson Electricals Pvt. Ltd. APPELLANT

Vs

Silicon Graphics Systems (India) Pvt. Ltd. RESPONDENT

Date of Decision : 04-05-2009

Acts Referred:

Citation : (2009) 159 DLT 634 : (2010) 7 RCR(Civil) 393

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : Anurag Kumar, for the Appellant; Rajiv Tyagi, for the Respondent

Final Decision : Allowed

Judgement

Shiv Narayan Dhingra, J.—By this application u/s 9 of the Arbitration & Conciliation Act, 1996 (for short ''the Act'') the petitioner has made a prayer that this Court should direct the respondent to deposit the amount of the majority award which was subject matter of challenge u/s 34 of the Act before the Court. It is submitted by the petitioner that the respondent had filed frivolous objections against the award and was not arguing the matter. The respondent company was a 100% subsidiary of Indian Company and there was every likelihood of the respondent company winding up from India and turning the award into a paper decree. During arguments, learned Counsel for the petitioner submitted that the Court should at least ask for some security in the form of bank guarantee or property from the respondent. He submitted that due to recession many such companies as that of the respondent were leaving the country without discharging their liability.

2. Learned Counsel for the respondent on the other hand stated that in view Section 36 of the Arbitration & Conciliation Act which prohibits the execution of the award till disposal of the objections, this Court has no jurisdiction to direct the respondent to deposit the amount as security or to give bank guarantee which was just equivalent to deposit of the amount. He also argued that the

petitioner has placed no material on record to show that the respondent was having any intention to close its business or to run away. He submitted that though the respondent was a 100% subsidiary of US Company but it was an Indian company registered under Indian law and in case of winding up, the petitioner and all other creditors would get a due notice as required under law and the respondent cannot run away just like that.

3. The question regarding deposit of amount during pendency of the objections was considered by the Supreme Court in National Aluminum Co. Ltd. v. Pressteel and Fabrications Pvt. Ltd. and Anr. AIR 2005 SC 1514 wherein the Supreme Court observed that an award when challenged u/s 34 of the Act within the time stipulated therein, becomes unexecutable. There is no discretion left with the Court to pass any interlocutory order in regard to the said award except to adjudicate on the correctness of the claim made by the applicant therein. Therefore, that being the legislative intent any direction from the Court contrary to that also becomes impermissible.

4. In view of the above judgment, I consider that this Court cannot direct the respondent to deposit the awarded amount in the Court during pendency of the application u/s 34 of the Act. The petitioner has also failed to place on record any material to show that the respondent was making efforts to sell its properties or was diluting the worth of its shares or was committing any such act which gives rise to the apprehension to the petitioner that the respondent''s wealth would be wiped away shortly or soon. In view of this I consider that this application u/s 9 of the Act cannot be allowed and is hereby dismissed.

