

IA No: GA-Com 1 of 2024
APOT No. 312 of 2024
with
AP-Com No. 532 of 2024
IN THE HIGH COURT AT CALCUTTA
In appeal from its
ORDINARY ORIGINAL CIVIL JURISDICTION
CIVIL APPELLATE JURISDICTION
(Commercial Division)

The West Bengal Power Development Corporation Ltd.
Versus
Ujaas Energy Ltd.

Before:

The Hon'ble Justice I. P. MUKERJI

And

The Hon'ble Justice PARTHA SARATHI SEN

Date: 2nd September 2024

Appearance:

Mr. Jishnu Chowdhury, Advocate

Mr. Chayan Gupta, Advocate

Mr. Rittick Ghowdhury, Advocate

Mr. Aviroop Mitra, Advocate

for the appellant

Mr. Abhrajit Mitra, Sr. Advocate

Ms. Rajshree Kajaria, Advocate

Mr. Satadeep Bhattacharyya, Advocate

Mr. Uttam Sharma, Advocate

for the respondent

The Court: Order in terms of prayer (a) of the stay petition.

After hearing learned counsel for the parties and considering the urgency of the matter, we are in a position to dispose of this appeal today itself dispensing with all formalities.

This is a most interesting case.

An interim award dated 3rd April 2024 has been challenged by the appellant which was the respondent in the arbitral

proceedings. By this interim award the counter-claim made by the appellant has been held to be not sustainable.

This award was challenged under section 34 of the Arbitration & Conciliation Act, 1996 before the learned single judge of this court. By a judgment and order dated 21st August 2024 the court dismissed the application.

Hence this appeal.

We find from the impugned award which has been upheld by the learned single judge that by a detailed reasoning process the said counter-claim of the appellant has been held to be not maintainable. Very shortly put, the reason is that as a result of the Corporate Insolvency Resolution Process before the National Company Law Tribunal the alleged claim of the appellant stood extinguished.

Now the question is this.

A lis is pending before the arbitral tribunal. There is a claim and a counter-claim. A counter-claim has to be taken as a cross suit. It is true that the detailed procedure of the Civil Procedure Code may not be followed by the arbitral tribunal. It was possible to dispose of the claim and the counter claim independently.

But in doing so, in our view, a rational procedure had to be followed. It could be under the procedure prescribed in Order VII Rule 11 of the Civil Procedure Code, going strictly by the statement of claim or counter statement with counter-claim to ascertain whether the counter-claim was barred by law. Otherwise, the full procedure of exchange of pleadings, discovery of documents, receiving evidence had to be followed before an award could be made.

The application of the respondent on which the impugned interim award was passed may have been styled as an application under Order VII Rule 11 of the Civil Procedure Code. But the ruling of

the learned arbitrator was like a full-fledged judgment and decree with elaborate discussion on facts and evidence. This could only have been made on full trial, considering both the claim and the counter-claim.

In the circumstances, we are not staying the arbitral proceedings. The arbitral proceedings may continue. The appellant will have the liberty to adduce whatever evidence they wish to produce and make arguments.

At the close of the proceedings it will be open for the learned arbitrator to decide while passing the final award whether to affirm his earlier interim award with regard to the counter-claim or to make a different ruling after taking the claim and the counter-claim into account.

The appeal (APOT 312 of 2024) and the connected stay application (IA No: GA 1 of 2024) are disposed of by modifying the impugned judgment and order, as above.

As no affidavits were invited, the allegations contained in the stay application are deemed to have been not admitted.

(I. P. MUKERJI, J.)

(PARTHA SARATHI SEN, J.)