

OCD-35, 36 & 37

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA  
ORIGINAL SIDE  
COMMERCIAL DIVISION

AP-COM/860/2024

THE DIRECTOR GENERAL, NATIONAL LIBRARY, MINISTRY OF CULTURE,  
GOVERNMENT OF INDIA  
VS  
EXPRESSION 360 SERVICES INDIA PRIVATE LIMITED (NOW KNOWN AS  
EXPRESSION AD AGENCY PVT. LTD.)

AP-COM/644/2024

THE DIRECTOR GENERAL, NATIONAL LIBRARY, MINISTRY OF CULTURE,  
GOVERNMENT OF INDIA  
VS  
EXPRESSION 360 SERVICES INDIA PRIVATE LIMITED (NOW KNOWN AS  
EXPRESSION AD AGENCY PVT. LTD.)

EC-COM/245/2024

EXPRESSION 360 SERVICES PRIVATE LIMITED (ALSO KNOWN AS  
EXPRESSION AD AGENCY PVT. LTD.)  
VS.  
THE DIRECTOR GENERAL, NATIONAL LIBRARY, MINISTRY OF CULTURE,  
GOVERNMENT OF INDIA

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date : 22<sup>nd</sup> January, 2025.

Appearance:

Mr. Nandlal Singhania, Adv.(VC)

Ms. S.Roy Choudhary, Adv.

...for the petitioner in AP-COM/860/2024 & AP-COM/644/2024

Mr. Raj Ratna Sen, Adv.

Mr. Balarko Sen, Adv.

Mr. Suvradal Choudhury, Adv.

. . . for award holder/respondent.

**AP-COM/860/2024**

The Court: This is an application for unconditional stay of the arbitral award dated February 20, 2024 passed by the sole Arbitrator.

Mr. Singhanian, learned Advocate appearing for the petitioner submits that the provision of the Code of Civil Procedure shall be applicable in this case and there should be an automatic stay of the award as the award debtor/petitioner is a Central Government authority. Mr. Singhanian refers to Order 27 Rule 8-A of the Code of Civil Procedure and submits that no security as mentioned in Rules 5 and 6 of Order 41 of CPC shall be required from the Government. Further submission is that, failure on the part of the award holder to perform the obligation under the contract was a fraudulent action. The award-holder cheated the authority by not performing the work and by claiming payment for unfinished work. Non-performance would disentitle the award holder from reaping the benefit of the award. The application for setting aside the award should be decided by this Court. Further submission of Mr. Singhanian is that the learned Arbitrator had acted beyond the scope of the dispute and awarded a sum larger than what was claimed by the award holder in the Statement of Claim. This would also be a ground for unconditional stay of the award.

Mr. Sen, learned Advocate appearing on behalf of the award holder submits that the contract was entered into between the parties to curate an exhibition at the National Library, Kolkata.

The contention of the petitioner with regard to fraudulent activities of the award holder is not borne out from the Statement of Defence. Moreover, the learned Arbitrator had analysed the claim and counter-claim of the parties and adjudicated upon the same upon going through the evidence. A reasoned order was passed.

Mr. Sen relies on a decision in the case of ***Pam Developments Private Limited Vs. State of West Bengal*** reported in ***(2019) 8 SCC 112*** and submits that the Hon'ble Apex Court clearly laid down that Order 27 Rule 8-A of the Code of Civil Procedure would not govern the provisions of Section 36(2) of the Arbitration and Conciliation Act, 1996. Rather, the Hon'ble Court has opined that a Court had the power to direct full deposit of the decretal amount as security.

Mr. Sen also relies on a decision in the case of ***Hyder Consulting (UK) Limited Vs. Governor, State of Orissa*** reported in ***(2015) 2 SCC 189*** and submits that the Hon'ble Apex Court had laid down that the arbitral award would include the principal and the interest awarded and the party praying for stay of the award should secure the principal and the interest as well. Sum referred to in Section 31(7)(b) would include principal and interest.

Heard the parties.

There is no allegation with regard to any corruption either against the award holder or the learned Arbitrator. The only contention of the petitioner is that non-performance by the award holder and inability of the

award holder to discharge its liability under the contract was a fraudulent act and for such reason, the award should be stayed unconditionally.

This Court does not accept Mr. Singhania's first contention that the provision under Order 27 Rule 8-A of the Code of Civil Procedure should be applied in this case and the petitioner should be exempted from securing the award.

Relevant paragraphs of ***Pam Development (Supra)*** are quoted below:-

*“24. Further, it is to be noticed that Order 27 Rule 8-A CPC was inserted in 1937 when the British Crown was ruling our country. The same was brought in during the period of British Raj to protect the interest of the then Government (Crown). While considering a case where the State of West Bengal was carrying on trade as owner and occupier of a market in Calcutta (now Kolkata) without obtaining a licence as required under Section 218 of the Calcutta Municipal Act, 1951, a Constitution Bench of this Court in Supt. and Remembrancer of Legal Affairs v. Corpn. of Calcutta considered the question as to whether this Court should adopt the rule of construction accepted by the Privy Council in interpreting statute vis-à-vis the Crown and held that: (AIR p. 1001, para 23)*

*“23. . . . There are many reasons why the said rule of construction is inconsistent with and incongruous in the present set-up where we have no Crown, the archaic rule based on the prerogative and perfection of the Crown has no relevance to a democratic republic; it is inconsistent with the rule of law based on the doctrine of equality.”*

*25. In our considered view, the provision which was incorporated in the year 1937 during the British Raj, giving certain safeguards to*

*the Government (which was then the British Crown) would not be applicable in today's time, when we have a democratic Government.*

*26. Arbitration proceedings are essentially alternate dispute redressal system meant for early/quick resolution of disputes and in case a money decree – award as passed by the arbitrator against the Government is allowed to be automatically stayed, the very purpose of quick resolution of dispute through arbitration would be defeated as the decree-holder would be fully deprived of the fruits of the award on mere filing of objection under Section 34 of the Arbitration Act. The Arbitration Act is a special Act which provides for quick resolution of disputes between the parties and Section 18 of the Act makes it clear that the parties shall be treated with equality. Once the Act mandates so, there cannot be any special treatment given to the Government as a party. As such, under the scheme of the Arbitration Act, no distinction is made nor any differential treatment is to be given to the Government, while considering an application for grant of stay of a money decree in proceedings under Section 34 of the Arbitration Act. As we have already mentioned above, the reference to CPC in Section 36 of the Arbitration Act is only to guide the court as to what conditions can be imposed, and the same have to be consistent with the provisions of the Arbitration Act.*

*27. It may be true that CPC provides for a differential treatment to the Government in certain cases, but the same may not be so applicable while considering a case against the Government under the Arbitration Act. For instance, Section 80 CPC provides for a notice of two months to be given before any suit is instituted against the Government. Further, it also provides that no ex parte injunction order can be passed against the Government. Whereas on the other hand, under the Arbitration Act no such special provision has been made with regard to arbitration by or against the Government. There is no requirement under the Arbitration Act for a notice of two*

*months to be given to the Government before invoking arbitration proceeding against the Government. Further, Sections 9 and 17 of the Arbitration Act also provide for grant of ex parte interim orders against the Government.*

*28. Section 36 of the Arbitration Act also does not provide for any special treatment to the Government while dealing with grant of stay in an application under proceedings of Section 34 of the Arbitration Act. Keeping the aforesaid in consideration and also the provisions of Section 18 providing for equal treatment of parties, it would, in our view, make it clear that there is no exceptional treatment to be given to the Government while considering the application for stay under Section 36 filed by the Government in proceedings under Section 34 of the Arbitration Act.*

*29. Although we are of the firm view that the archaic Rule 8-A of Order 27 CPC has no application or reference in the present times, we may only add that even if it is assumed that the provisions of Order 27 Rule 8-A CPC are to be applied, the same would only exempt the Government from furnishing security, whereas under Order 41 Rule 5 CPC, the Court has the power to direct for full or part deposit and/or to furnish security of the decretal amount. Rule 8-A only provides exemption from furnishing security, which would not restrict the Court from directing deposit of the awarded amount and part thereof.”*

From my reading of 2<sup>nd</sup> proviso of Section 36 Sub-section (3), it appears that when an agreement or a contract on the basis of which the award had been passed or when the making of the award was induced or effected by fraud or corruption, the award could be unconditionally stayed. The contention of Mr. Singhania that the learned Arbitrator had passed an award beyond the claim or had failed to appreciate the evidence and the

contents of the counter-claim of the award debtor, are matters touching the merit of the application under Section 34 of the Arbitration and Conciliation Act, 1996. Fraud and corruption as envisaged in the said proviso does not relate to any erroneous decision of the Arbitrator. It is not the contention of the award debtor that the agreement was a product of fraud. It is also not the case run that award holder in a fraudulent manner influenced the learned Arbitrator to make and publish the award. Fraud and corruption should, prima facie, be evident from the records. The threshold to prove fraud and corruption is very high.

Under such circumstances, there is no *ex facie* indication before this Court that either the agreement or the award were perpetrated by fraud and corruption. So, the question of unconditional stay does not arise. The prayer of the award debtor/petitioner is disallowed.

The award debtor/petitioner shall secure a sum of Rs.2,70,00,000/- for stay of the award and the execution proceedings. 50% of the said amount shall be secured in cash before the learned Registrar, Original Side of this Court and 50% shall be secured by bank guarantee to the satisfaction of the learned Registrar, Original Side within four weeks from the date of communication of this order.

There shall be unconditional stay of the award and the execution proceedings for a period of four weeks. Such unconditional stay will continue till disposal of the application under Section 34 of the Arbitration and Conciliation Act, 1996, provided the direction as mentioned hereinabove is complied with. In the event of default, the award holder shall be at liberty

to proceed with the execution and enforce the award and the stay shall stand automatically vacated.

The application being AP-COM/860/2024 is disposed of.

**AP-COM/644/2024**

Let this matter appear in the monthly list of February, 2025 under the appropriate heading.

**EC-COM/245/2024**

Let this matter go out of the list at present, with liberty to mention.

(SHAMPA SARKAR, J.)

sb/pa