IN THE HIGH COURT AT CALCUTTA
(Commercial Division)
ORIGINAL SIDE

Present: Hon'ble Justice Shampa Sarkar

AP-COM/947/2024
KARUR VYSYA BANK
VS
SREI EQUIPMENT FINANCE LIMITED

For the petitioner : Mr. Rupak Ghosh, Sr.Adv.
Ms. Sweta Gandhi, Adv.

For the respondent
: Mr. Swatarup Banerjee, Adv.
Mr. Sariful Haque, Adv.
Mr. Rajib Mullick, Adv.
Mr. Biswaroop Ghosh, Adv.

Hearing concluded on: 29.01.2025
Judgment on: 06.03.2025

Shampa Sarkar, J.:-

1. This is an application under Section 36 (2) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to the said Act of 1996).

2. The dispute referred to arbitration arose out of an agreement for assignment (in short AFA) dated September 29, 2020 and a designated account agreement (in short DAA) dated September 29, 2020. The claimant/respondent referred the dispute by invoking the arbitration clause in the AFA dated September 29, 2020. The petitioner prays for unconditional stay of the award dated May 26, 2024, passed by the learned sole Arbitrator.

3. The respondent was the claimant. The case run by the respondent before the learned Arbitrator was that the petitioner had extended a credit facility to the respondent. The respondent assigned the right, title and interest of the rent payable by Mahalaxmi Infra Contract limited (in short Mahalaxmi), under Master Lease Agreement (hereinafter referred to agreement) dated December 31, 2016, to the petitioner, under the AFA dated September 29, 2020.

4. In furtherance to the AFA the parties entered into the DAA. Mahalaxmi was to deposit the lease rentals, which included applicable GST, directly in the escrow account No.2105107000000140 maintained with, held and operated by the petitioner/bank. The petitioner was supposed to transfer the amount of indirect tax (CGST and SGST) to the respondent's account (assignor account), that was received from Mahalaxmi. Clause 2.3 (e) of AFA and clause 5.3 of the DAA, mandated such transfer.

5. Clause 2.3(e) of AFA stated as follows :-

> "2.3(e). In the event that the renter transfers to the assignee (by credit to the designated account) any amounts to be paid by the renter for the assignor, as the case may be, who was in indirect taxes, such amount shall be transferred by the assignee to the assignor, and the assignor shall ensure that the same is deposited with the relevant govemment/ regulatory authority, as aforesaid."

6. Clause 5.3 of the AFA stated as follows :-

> "**5.3** The assignee shall on receipt of the receivables in the designated account shall first adjust the amount of the transferred interest that needs to be transferred to watch the receivables and post search appropriation, make the payment to the assignor to watch the following :
>
> - The amount of indirect tax that needs to be transferred to the assignor account as contemplated in the assignment agreement."

7. The respondent alleged that as on March 31, 2023, the petitioner had illegally and unlawfully withheld a sum of Rs.5,95,93,332/- out of the GST

amount received from Mahalaxmi. Several letters and demand notices were issued to the petitioner, but the petitioner did not revert. The outstanding dues were not transferred to the account of the respondent. On account of the alleged breach, the respondent by a letter dated December 12, 2023, and corrigendum letter dated January 2, 2023, terminated the agreements and referred the aforementioned dispute to arbitration.

8. The respondent invoked the arbitration clause and proposed the name of a learned retired Judge of this court as the sole Arbitrator, which was accepted. The said sole arbitrator withdrew himself from the arbitration. Thereafter, another notice under Section 21 of the said Act of 1996, was issued by the respondent on February 23 2024, proposing the name of the learned Arbitrator who had passed the award. The respondent agreed to such proposal.

9. Mr. Ghosh, learned Advocate for the petitioner submitted that the award deserved to be set aside on various grounds. The learned Arbitrator did not allow the petitioner to place vital evidence in support of its contention that, the respondent had waived its right to claim the GST component from the receivables of the rental agreement with Mahalaxmi. The learned Arbitrator failed to consider that by approving its liabilities to the extent of Rs. 18.41 crores in respect of claims submitted in Form C by the petitioner, the IRP had squared up all receivable against debt owed to the petitioner for Rs. 18.41 crores. The learned Arbitrator ignored the rental payments summarized in tabular form, demonstrating that Rs. 90.26 lakhs was due on account of charges for foreclosure of the equipment and the amount had nothing to do with the GST payment. Various clauses of the

DAA, more particularly clause 4 and clause 5.3 thereof were ignored. The learned Arbitrator failed to take into consideration the purport and meaning of clause 2.7 of the AFA.

10. A combined reading of the aforementioned clauses would clearly indicate that the respondent was under a contractual obligation to make a written request or send an intimation in advance, to the petitioner in respect of transfer of proceedings/amount, deposited in the designated account. The respondent had to take necessary steps to inform and bring to the notice of the petitioner, details of the amounts deposited by Mahalaxmi.

11. The respondent had failed to comply with the requirements of the AFA and no written request was made by the respondent, identifying the details of any amount deposited as "excluded amount", together with transferred interest (in short TRI) during the tenure of the agreements, while the transferred interests were being deposited by Mahalaxmi and as such, respondent was estopped from demanding the purported claim by initiating an arbitration proceeding. The learned Arbitrator wrongly and illegally accepted the fictitious demand and computations thereof, made by the respondent towards payment of GST charges.

12. The claims for GST made by the respondent were baseless, lacked credibility and were not backed by cogent evidence. The making of the award was vitiated on the ground that the same was based on illegal demands made by the respondent, which were not corroborated by evidence and the learned Arbitrator proceeded to pass the award, in the absence of any evidence at all. Thus, the making of the award and the publication thereof,

were induced by fraud and corruption. Inadmissible claims were allowed by the learned Arbitrator, causing unjust enrichment to the respondent.

13. According to the petitioner, the learned Arbitrator failed to appreciate that as per the agreement, the petitioner adjusted the amount deposited by Mahalaxmi in the designated escrow account, towards its dues. The AFA and the loan facility agreement executed between the petitioner and the respondent, specifically provided that in the event of any default, the petitioner had exclusive right of bankers lien over any excess amount deposited in the designated account. The petitioner was lawfully entitled to adjust the amount from the receivables.

14. According Mr. Ghosh, the award was *ex facie* erroneous. The learned Arbitrator had come to a conclusion that clause 2.7 of the AFA, would not come into operation. Such finding of the learned Arbitrator was perverse and contrary to the agreement. There was always a deficit between the amount received in the designated account from the rental and the amount to be received by way of transferred interest and retained interest. The cumulative deficiency was to the extent of Rs.7.91 crores. Therefore, the provision of clause 2.7 of the AFA applied from the very inception of the assignment, which was an undisputed fact. Such evidence was totally ignored by the learned Arbitrator. The proceedings before the National Company Law Tribunal, Kolkata, were also vital. The learned Arbitrator had chosen to ignore such vital aspects while passing the award. There was adequate indication that the learned Arbitrator had transgressed all moral and ethical standards and had intentionally denied justice to the petitioner.

15. The finding of the learned Arbitrator that, the loan agreements were modified by the AFA, was factually incorrect and arbitrary. The AFA was to service the loan itself and therefore, subservient to the loan agreement. Further, the learned Arbitrator had ignored the fact that the lien clause applied to all receivables (including retained interest). The creation of the AFA, was to serve the debt due to the petitioner under the original loan agreements and the petitioner had every right to receive the entire rental deposited by Mahalaxmi towards servicing the loan agreement. The learned Arbitrator disregarded the right of the petitioner to exercise lien under the loan agreement and also under the Indian Contract Act. The final submission was that, the learned Arbitrator had hurriedly published the award, by pre-judging the claim. This was contrary to the fundamental policy of India.

16. Mr. Satarup Banerjee, learned Advocate for the respondent, submitted that the merits of the award should not be a consideration while deciding a prayer for unconditional stay of the award. The prayer for unconditional stay of the award could be allowed only if the requirements of the second proviso to Section 36(3) of the said Act of 1996, were met. That, the arbitration agreement or the contract being the basis of the award or the making of the award were induced by fraud or corruption. It was not the petitioner's case that either the contract or the arbitration agreement was induced by fraud or corruption. The petitioner's entire allegation was that the making of the award and the way in which the learned Arbitrator proceeded in the matter, were perpetrated by fraud. Allegations of bias and leniency towards the respondent were made.

17. Mr. Banerjee relied on various documents before the court and the minutes of the meetings before the learned Arbitrator, in order to show that opportunities were given to the petitioner to produce relevant documents, which had not been appended to the pleadings. In the fourth sitting held on May 18, 2024, the learned Arbitrator permitted the petitioner to forward copies of the documents, namely, loan sanction letter, RBI circular etc., sought to be relied upon by the learned Advocate for the petitioner during the course of the argument. It was specifically recorded by the learned Arbitrator that no further surprises should be thrown by the petitioner by way of further documents, which were not on record.

18. The minutes of the meeting held on May 22, 2024, was relied upon in support of the contention that the learned Arbitrator had considered the submissions of the respondent that, the amounts were adjusted against a cash credit account with the respondent under the consortium agreement.

19. The learned Arbitrator took note of the petitioner's reliance on the particulars submitted in Form C in the course of preparation and approval of the corporate insolvency resolution plan, pertaining to the respondent. The learned Arbitrator further noted the petitioner's contention that, from the particulars under Serial 4 A which formed a part of the Form C declaration, the petitioner's claim on account of credit facility granted to the respondent under the consortium agreement was frozen at Rs.18,41,06,736.35/-. This figure was arrived at after considering the adjustments against the payment made by Mahalaxmi into the designated account.

20. The specific contention of the petitioner that, as the adjustments had taken place prior to the stage of filing of the Form C, the adjustments were deemed to have been accepted and no question of reopening the same arose, was also considered. The learned Arbitrator in the course of the arguments also recorded that, it was very unprofessional on the part of the petitioner to produce documents, which were not part of the records. Neither were such documents ever disclosed nor any notice was issued to the respondent, indicating that reliance would be placed on such documents. The statement of accounts which had been unilaterally prepared by the petitioner and was not a part of the correspondence exchanged between the parties, were not accepted.

21. The minutes recorded that unusual leave was granted to the petitioner to make further submissions, despite the conclusion of the respondent's rejoinder.

22. Reference was made to the various findings of the learned Arbitrator which were elaborately discussed in the award along with the submissions and documents produced by the respective parties. The contentions of the petitioner that, the adjustment of the GST amount prior to the insolvency proceeding would indicate that the respondent was well aware of such process of adjustment, had not raised any objection at the relevant stage and had allowed the sum payable to the petitioner under the loan agreements to be frozen at Rs.18,41,06,736.35/-, were taken into account by the learned Arbitrator.

23. However, the learned Arbitrator applied the provisions of the Goods and Service Tax Act and came to the finding that, it was the obligation of the

seller of the goods or the provider of the services to collect the GST from the client and pay to the authorities. It was an obligation that the seller of the goods or the provider of the services must discharge under the law and the exact quantum of tax which was extracted from the buyer was to be deposited at the appropriate counters of the government. The money that the petitioner adjusted and appropriated from the designated account towards its dues, was money earmarked for being handed over to the respondent as a mere courier, to carry the same to the appropriate tax counters.

24. On such reasoning, the contention of the petitioner that, the appropriation of the money deposited by Mahalaxmi were legal and valid and used towards adjustment of the loan taken by the respondent, was held to be unacceptable. The adjustment of the money payable by the petitioner to the respondent, was illegal and improper, as per the learned Arbitrator.

25. The parties made elaborate submissions both for and against the award. The second proviso to Section 36(3) required a primary satisfaction on the part of the court that the making of the award as alleged by the petitioner was induced or affected by fraud or corruption. The award-debtor could seek stay of operation of the award upon discharging the burden of at least, prima facie, showing that the award was induced by fraud or corruption. Fraud and corruption have not been defined in the said Act.

26. The Oxford dictionary defines fraud as here under :-

> "/n. 1. Criminal deception; the use of the false misrepresentations to gain an unjust advantage. 2. A dishonest article or trick. 3. A person or thing not fulfilling what is claimed or expected of him, her, or it."

27. From the legal standpoint Black's law dictionary (9th Edition) defines fraud as here under :-

> "fraud, n. 1. A Knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment. Fraud is usually a tort, but in some cases (es.p when the conduct is willful) it may be a crime. – Also termed intentional fraud."

28. In the decision of ***SP Chengalvaraya Naidu (Dead) By LRs. Vs. Jagannath (Dead) by LRs and other*** reported in ***(1994) 1 SCC 1,*** fraud was defined as here under:-

> "an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage."

29. In ***Venture Global Engineering LLP vs. Tech Mahindra Limited*** reported in ***(2018) 1 SCC 656*** deliberation on the meaning of fraud was as follows:-

> "**76.** The expression "fraud", what it means and once proved to have been committed by the party to the lis against his adversary then its effect on the judicial proceedings was succinctly explained by this Court in Ram Chandra Singh v. Savitri Devi [Ram Chandra Singh v. Savitri Devi, (2003) 8 SCC 319] in the following words : (SCC p. 322b-d)
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> "Fraud as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by word or letter. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations which he knows to be false, and injury ensues therefrom although the motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with

fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata."

77. Similarly, how the leading authors have dealt with the expressions "fraud", "misrepresentation", "suppression of material facts" with reference to various English cases also need to be taken note of. This is what the learned author Kerr in his book Fraud and Mistake has said on these expressions.

78. While dealing with the question as to what constitutes fraud, the learned author said, "What amounts to fraud has been settled by the decision of House of Lords in Derry v. Peek [Derry v. Peek, (1889) LR 14 AC 337 (HL)]

'... fraud is proved when it is shown that a false representation has been made (1) knowingly, or (2) without belief in its truth, or (3) recklessly, careless whether it be true or false."

79. The author has said that, Courts of Equity have from a very early period had jurisdiction to set aside awards on the ground of fraud, except where it is excluded by the statute. So also, if the award was obtained by fraud or concealment of material circumstances on the part of one of the parties so as to mislead the arbitrator or if either party be guilty of fraudulent concealment of matters which he ought to have declared, or if he wilfully mislead or deceive the arbitrator, such award may be set aside.

80. The author said that, if a man makes a representation in point of fact, whether by suppressing the truth or suggesting what is false, however innocent his motive may have been, he is equally responsible in a civil proceeding as if he had while committing these acts done so with a view to injure others or to benefit himself. It matters not that there was no intention to cheat or injure the person to whom the statement was made."

30. Admittedly, it is not the petitioner's case that either the arbitration agreement or the contract was induced by fraud or corruption. The entire allegation of the petitioner is against the learned Arbitrator and the process of making of the award. The sum and substance of the submissions of Mr. Ghosh was that the learned Arbitrator proceeded in an unfair and biased manner in order to hurriedly allow the claim of the respondent. The decision was premeditated and the learned Arbitrator proceeded in a preconceived manner. The learned Arbitrator disregarded the defense case completely and

ignored vital evidence. The learned Arbitrator refused to allow the petitioner to adduce vital evidence.

31. It was argued that the assignment agreement and designated agreement were both subservient to the loan agreements entered into between the petitioner and the respondent and the amounts deposited by Mahalaxmi were rightly appropriated to the petitioner, to service the dues payable by the petitioner to the respondent under the working capital consortium loan agreement. This vital fact, according to the petitioner, was ignored by the learned Arbitration.

32. The minutes of the meeting dated May 18, 2024, recorded as follows:-

> **"...**The respondent resumes its arguments and refers to its original loan agreement with the claimant. The document has not been disclosed nor has been appended to the pleadings. The respondent refers to a letter dated May 30, 2017 issued by the respondent to the claimant sanctioning a loan Rs100 crore. The respondent places a clause at page 29 of the sanction letter which provides that the respondent would have a right to set off all money held on account of the claimant in respect of any sum outstanding in any other account. The relevant clause is no more than what Section 171 of The Contract Act, 1872 confers on a banker by way of a general lien. The respondent also seeks to rely on a circular issued by the Reserve Bank of India but submits that the relevant circular is not in possession of counsel at the moment. The date of the circular is also not indicated.
>
> The claimant, quite understandably, takes serious objection to documents being referred to without such documents having been appended to the pleadings or otherwise disclosed. However, in the interest of justice, the respondent is permitted time till all of May 19, 2024 to forward copies of the sanction letter and the RBI circular that it seeks to rely on the advocates for the claimant. No further surprises should be thrown by the respondent by way of any further document which is not already on record..."

33. The minutes of the meeting dated May 22, 2024, recorded as follows:-

> "...1. The respondent has been heard at length and even after the claimant concluded its rejoinder. The principal submission on behalf of the respondent today is that it adjusted the two amounts against its

> cash credit account with the claimant under a consortium agreement. The respondent relies on the particulars submitted by it in Form C in course of the preparation and approval of the corporate insolvency resolution plan pertaining to the claimant.
> 2. According to the respondent, it will be evident from the particulars under serial number 4A indicated in the chart which forms a part of the Form C declaration, that the respondent's claim on account of the credit facilities granted to the claimant under the consortium agreement was frozen to Rs.18,41,06,736.35p. This figure of Rs.18,41,06,736.35p was arrived at after considering the adjustments made against the payments made by Mahalakshmi into the designated account. It is the assertion of the respondent that since the adjustments had taken place prior to when the Form C was filed, the adjustment is deemed to have been accepted and no question arises of the same being re-opened now.
> 3. Though the arbitrator had made it clear in course of the preliminary hearing that all documents that the parties sought to rely on must be disclosed along with the pleadings, the respondent has been particularly remiss in such regard. Quite unprofessionally, in the middle of arguments, a particular document not on record is sought to be relied upon without such document having been disclosed or even prior notice in such regard having been issued to the other side. In similar vein, a statement of accounts, which has been unilaterally prepared by the respondent and is not a part of any correspondence exchanged with the claimant or any other person, is sought to be placed on behalf of the respondent after unusual leave was granted to the respondent to make further submission despite the conclusion of the claimant's rejoinder. Such unilateral statement of accounts has not been looked into…"

34. The award discloses that both parties agreed to the reference of the dispute to the learned Arbitrator. No dispute had been raised as to the existence of the arbitration agreement. At no stage of the reference, had the petitioner raised any claim that the dispute was not capable of adjudication in terms of the arbitration agreement between the parties. The arbitration clause was considered. Both the parties agreed before the learned Arbitrator that no witnesses would be called. The dispute could be adjudicated on the basis of the documents that would be disclosed and the correspondence exchanged.

35. Both the petitioner and the respondent were allowed adequate opportunity to produce their documents in support of their contentions. Thus, the first allegation that the learned Arbitrator had allowed the respondent to place documents and adduce evidence even in the midst of arguments, but had denied such opportunity to the petitioner is not, prima facie, borne out by the records. This court is not persuaded to hold that the learned Arbitrator had disrupted the course of justice by denying a party to the proceeding adequate opportunity to adduce evidence.

36. Four issues were framed by the learned arbitrator as follows:-

> "a. Whether the agreements between the parties specifically provided for the treatment of the GST component included in the lease rentals tendered by the claimant's lessee to the respondent?
> b. Whether the respondent was entitled to adjust all the money deposited into the designated account against the universal dues of the respondent against the claimant?
> c. In the alternative, whether the alleged obligation of the respondent to make over the GST component of the lease rentals was subject to the claimant furnishing proof of deposit of the GST with the appropriate authorities?
> d. Whether, and to what extent, is the claimant entitled to by way of relief ?"

37. The various clauses of the AFA were discussed in paragraphs 12 and 13 of the award. The submissions of the parties were recorded in great detail. The event of default committed by the respondent and the declaration of NPA were discussed. The judgments cited by the parties were considered and ultimately in paragraphs 33, 34 and 35, the learned Arbitrator arrived at the conclusion as to why the GST component, which was adjusted against the dues payable by the respondent against the loan agreements, were not in accordance with the law.

38. The said paragraphs of the award are quoted below :-

"33. Despite the long and arduous submission and written notes of the respondent, there is an element of sympathy which is due to the respondent. The desperation on its part to which in at every straw may be attributed to the obvious loss it was suffered on account of the claimant. However, no amount of loss suffered by the respondent on account of the claims of can condone the illegality committed by the respondent bank in acting contrary to the terms of an express agreement admittedly signed by it and seeking to adjust money out of an item of accounts that was clearly impermissible. All of the respondent's submission, including the authorities relied upon by it, speak of the right of a bank as a creditor to appropriate towards its dues any asset or property of a constituent which is a debtor, where money can also be regarded as an asset. But the key to the entire issue is in whether the money that the respondent bank has adjusted was money that belonged to the claimant or could be regarded as an asset or property or security or the like of the claimant.

34. It would be prudent in this context to understand the fundamental principle governing the goods and services tax. Under the law for the time being in force, a person who acquires any specified goods or obtains any specified service is required to pay a percentage of the price for the goods of services by way of goods and services tax. Now, the obligation to pay the tax is of the person who purchases the goods or the person who obtains the service. But because of the impracticability of every citizen having to run to the tax counters before or after obtaining any goods or services, the law requires the seller of the goods or the service provider to obtain the tax component and collect the same on behalf of the appropriate authority for the same to be deposited with such appropriate authority. If the scheme of the goods and services tax is grasped, the tax that the seller of any goods or the provider of any services collects from his client can never be regarded as the seller's or the service-provider's own money or any part of such person's assets or the like. It is an obligation that the seller of the goods or the provider of services must discharge by operation of law and the exact quantum of tax which is extracted from the buyer of the goods or the person who obtains service is deposited at the appropriate counters of the government.

35. In principle, therefore, the very substratum of the defence run by the respondent is infirm. Whichever way one may look at the various nuances of defence adopted by the respondent, the assertion from every perspective is that whether by virtue of an agreement or by operation of law or by being entitled to claim a set-off, the respondent bank could adjust any money of its constituent against dues and respect of any other account; and this is exactly what the respondent did. The colossal flaw in this line of reasoning, from whatever aspect, is that the money that the respondent adjusted and appropriated from the designated account was not money that belonged to the claimant or money that the claimant could have used for its own purposes. The money that the respondent adjusted and appropriated from the designated account towards its other alleged dues from the claimant

was money earmarked for being handed over to the claimant as a mere courier to carry it to the appropriate tax counters."

39. Clause 2.7 of the AFA was interpreted by the learned Arbitrator in the following manner.

> "40. Clause 2.7 of the assignment agreement would come into play if the renter did the deposit the total monthly quantum required of it into the designated account. For instance, if the renter, Mahalaxmi, was required in terms of the renting schedule to deposit Rs.80 on account of receivables and Rs.20 on account of GST in a month; and the renter failed to deposit the entire amount of Rs.100 in any month, the respondent herein was entitled to appropriate the entire amount of Rs.80, if the deposit was more than Rs.80; or, the entire deposit if the deposit was less than Rs.80. Similarly, if there was a shortfall in the receivables that could be adjusted and appropriated by the respondent in one month, any amount more than the quantum deposited on account of receivables in the subsequent months could be appropriated towards the previous dues on account of receivables. But if the renter paid the receivables component and the GST component, it was incumbent on the respondent, in terms of clause 2.3(e) of the assignment agreement, to transfer the GST component to the claimant. In any event, no case has been made out of any default on the part of the renter in any particular month."

40. The contention of the petitioner that, the respondent had waived the right to claim refund of the GST component which was deposited by Mahalaxmi, was also discussed and decided in Paragraph 50 of the award reads as hereunder:-

> "**50.** Waiver is judicially defined to be a voluntary relinquishment of a known right. Since there are notices on record demonstrating that the claimant, whether through its erstwhile management or through the resolution professional appointed by the adjudicating authority, complained of the illegal adjustments made by the respondent from the designated account, A waiver by the claimant in such regard would have to be demonstrated as evident from any communication issued to the respondent or by any unavoidable inference from the conduct of the claimant. Nothing has been shown by the respondent that subsequent to the issuance of such notices, the claimant withdrew its objection in such regard. Nothing has also been shown from the order of the adjudicating authority approving
> the corporate resolution plan that the impugned adjustments were considered or credited to the respondent before arriving at the figure

of about Rs 18.41 crore, which was fixed as the quantum of debt payable by the claimant to the respondent post the resolution plan."

41. Under such circumstances, this court holds that the petitioner has failed to discharge the onerous duty to, *prima facie,* satisfy from the records that, the making of the award was vitiated by fraud and corruption. The threshold to prove fraud and corruption on the part of the learned Arbitrator in the making of the award would be much higher than a criticism of the findings of the learned Arbitrator. The petitioner would have to demonstrate unethical behaviour of the Arbitrator, which surpassed all moral standards.

42. An honest mistake or the incorrect appreciation of the terms of the contract cannot be either fraud or corruption. Moreover, the petitioner has also failed to substantiate that the respondent had intentionally withheld documents in order to mislead the learned Arbitrator and had obtained the award by unfair means. The petitioner was permitted to produce documents and calculations including the sanction letter and the RBI circular, which the petitioner failed to do. After closure of arguments, a unilateral statement of account was sought to be produced, which the learned Arbitrator held could not be looked into.

43. The petitioner had failed to show, *prima facie,* that the respondent had deliberately, in a premeditated way and with an intention to gain undue advantage, had suppressed and concealed documents from the learned Arbitrator or had misled the learned Arbitrator into the making of the award. The calculation has been provided by the award holder.

44. The law is well settled. An award debtor will have to secure the entire amount awarded, which includes the principal as also interest. This court does not find any reason to grant unconditional stay of the award.

45. The petitioner must secure the sum of Rs.8,40,52,832/- by furnishing a bank guarantee to the satisfaction of the learned Registrar Original Side, Calcutta. The bank guarantee shall be kept renewed from time to time. There shall be unconditional stay of the award for a period of four weeks from date and the stay shall continue till disposal of the application under Section 34 of the Arbitration Conciliation Act, 1996, upon compliance of this order. In case of default, the stay shall be vacated.

46. All observations made are tentative and the application for setting aside the award will be decided independently and on its own merits.

47. Parties are directed to act on the server copy of this judgment.

48. Urgent photostat certified copy of this judgment, if applied for, be given to the parties upon compliance of all formalities.

(Shampa Sarkar, J.)