



Ecopack India Paper Cup Pvt. Ltd. v. Sphere International (March 14, 2018)

BACKGROUND

Disputes between the Appellant and the Respondent were referred to arbitration. In its statement of defence filed in the arbitration, the Respondent purportedly admitted its liability to the extent of INR 47,56,388/-. On the alleged admission the arbitral tribunal passed an interim award dated 10 April 2017 (“**the Interim Award**”) under the Arbitration and Conciliation Act, 1996 (“**the Act**”). Aggrieved by the Interim Award, the Respondent filed a petition under Section 34 of the Act, before a Single Judge of the Bombay High Court (“**the Court**”), along with a separate application under Section 36(2)¹ for stay of the Interim Award (“**the Stay Application**”). The Single Judge granted an unconditional stay on execution of the Interim Award (“**the Impugned Order**”). The Appellant filed the present appeal before a Division Bench (“**the DB**”) of the Court against the Impugned Order.

ISSUES AND FINDINGS

The Appellant contended that while granting a stay, the Single Judge, in view of the language of Section 36(3) and the proviso thereto², ought to have ordered the Respondent to deposit the award amount with the court. It was further submitted that the Single Judge should have followed the provisions of Order 41 Rule 5 of the Code of Civil Procedure, 1908 (“**the Code**”).

The Respondent, on the other hand, contended that the arbitral tribunal had not considered the Respondent’s entire case while rendering its finding on admission of liability for a particular amount.

The DB upheld the observation of the Single Judge that the arbitral tribunal had not considered the Respondent’s entire case. The DB noted that the Respondent was entitled to explain the purported admission and thus there was a *prima facie* need for the arbitral tribunal to have given both parties an opportunity to lead evidence.

Addressing the need for directing deposit of decretal amount while granting stay, the DB noted that while the provisions of Order 41 Rule 5 of the Code should undoubtedly be considered in an application for stay of an award, the power to impose conditions for such stay is discretionary, and it cannot be mandated that a court should, in every case of stay, impose conditions or order deposit of decretal amount.

CONCLUSION

The present decision is reassuring for it clarifies that deposit of the decretal amount by a party challenging an award is not mandatory and will be ordered if the same is warranted by the circumstances of a case.

Disclaimer: The information provided in this update is intended for informational purposes only and does not constitute legal opinion or advice. Readers are requested to seek formal legal advice prior to acting upon any of the information provided herein. This update is not intended to address the circumstances of any particular individual or corporate body. There can be no assurance that the judicial/ quasi judicial authorities may not take a position contrary to the views mentioned herein.



¹ Section 36 – “(2) Where an application to set aside the arbitral award has been filed in the Court under section 34, the filing of such an application shall not by itself render that award unenforceable, unless the Court grants an order of stay of the operation of the said arbitral award in accordance with the provisions of sub-section (3), on a separate application made for that purpose.”

² Section 36 – “(3) Upon filing of an application under sub-section (2) for stay of the operation of the arbitral award, the Court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing:

Provided that the Court shall, while considering the application for grant of stay in the case of an arbitral award for payment of money, have due regard to the provisions for grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908 (5 of 1908).”