The West Bengal Power Development ... vs Ujaas Energy Ltd on 21 August, 2024

Author: Sabyasachi Bhattacharyya

Bench: Sabyasachi Bhattacharyya

In the High Court at Calcutta
Original Civil Jurisdiction
Commercial Division

The Hon'ble Justice Sabyasachi Bhattacharyya

AP-COM No. 532 of 2024
The West Bengal Power Development Corporation Ltd.
Vs
Ujaas Energy Ltd.

For the Petitioner : Mr. Jishnu Chowdhury, Adv.
Mr. Chayan Gupta, Adv.
Mr. Rittick Chowdhury, Adv.
Mr. Aviroop Mitra, Adv.
For the respondent : Mr. Abhrajit Mitra, Sr. Adv.

Ms. Rajshree Kajaria, Adv.

Mr. Satadeep Bhattacharya, Adv.

Hearing concluded on : 13.08.2024

Judgment on : 21.08.2024

Sabyasachi Bhattacharyya, J:-

1. The present challenge under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as, "the 1996 Act") has been preferred against an interim award under Section 31(6) of the 1996 Act dated April 3, 2024, by which the learned Arbitrator dismissed the counter claim filed by the respondent/present petitioner and directed the pleadings filed in connection thereto to be expunged from the records of the arbitral proceeding.

2. The brief facts of the case are as follows:

3. The petitioner is a public sector undertaking. It floated an e-tender in the month of February, 2017 for the job of design and engineering, manufacture/procurement, testing, supply, installation and commissioning of grid connected rooftop solar PV power plant in the township of the petitioner,

West Bengal Power Development Corporation Limited (WBPDCL), including five years comprehensive maintenance on turnkey basis at various locations in West Bengal.

4. The claimant/respondent participated in the tender and came out successful. A Letter of Award (LoA) was issued on May 12, 2017, to which there were two subsequent amendments, both dated June 27, 2018. The original work was to be completed by February 7, 2018 but was ultimately completed on February 15, 2019. The claimant/ present respondent subsequently invoked the arbitration clause in the agreement between the parties and made several claims, including outstanding dues, interest, loss and damages for illegal termination, damages for reputation and goodwill and other ancillary reliefs. The Statement of Claim was filed on January 17, 2023.

5. The present petitioner filed a Statement of Defence as well as a counter claim on May 13, 2023, making claims under several heads.

6. Prior to the commencement of the arbitral proceeding, the claimant/respondent herein entered into a Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code, 2016 (IBC) on September 17, 2020. On October 13, 2023, a Resolution Plan was approved by the National Company Law Tribunal (NCLT), Kolkata, thereby culminating the CIRP.

7. Prior to the approval of the Resolution Plan, the claimant/respondent had taken out an application under Section 16 of the 1996 Act, contending that the learned Arbitrator did not have jurisdiction to take up the counter claim in view of the moratorium under Section 14 of the IBC due to the pending CIRP. However, the learned Arbitrator turned down such objection and proceeded with the counter claim as well as the Statement of Claim.

8. After the approval of the Resolution Plan on October 13, 2023, the claimant/respondent took out an application under Section 31(6) of the 1996 Act, seeking dismissal of the counter claim on the ground that all claims against the Corporate Debtor /claimant-Company had been extinguished by virtue of such approval. By the impugned interim award, the learned Arbitrator allowed the said application and dismissed the counter claim, expunging the connected pleadings as well. Being aggrieved thereby, the present application under Section 34 of the 1996 Act has been preferred.

9. Learned counsel for the petitioner argues that in view of the earlier dismissal of the claimant s application under Section 16 on the self- same ground, the impugned interim award is barred by the principle of res judicata. It is contended that the learned Arbitrator, while dismissing the challenge to jurisdiction, had dealt with the issues involved herein at length, which gave a conclusive terminus to such issues.

10. Learned counsel next contends that the counter claim was not limited to pre-CIRP claims but also extended to future losses and continuing claims which would arise till after the initiation of the CIRP. Such component of the counter claims, it is argued, was not covered by the Resolution Plan, since the authority of the Resolution Professional and the Adjudicating Authority under the IBC are restricted to pre-CIRP claims only. Thus, the learned Arbitrator acted de hors the law and palpably without jurisdiction in dismissing the counter claims at an inchoate stage, which gives rise to patent

illegality and is shocking to the conscience, affording grounds under Section 34 of the 1996 Act.

11. Learned counsel cites Karsandas H. Thacker Vs. M/s. The Saran Engineering Co. Ltd., reported at AIR 1965 SC 1981, where it was held that on breach of contract by the respondent, the appellant was entitled under Section 73 of the Contract Act to receive compensation for any loss by the damage caused to him which naturally arose in the usual course of business from such breach.

12. In Kailash Nath Associates Vs. Delhi Development Authority and Another, reported at (2015) 4 SCC 136, it was stated that if damage or loss is not suffered, the law does not provide for a windfall. The said judgment, it is argued by the petitioner, was rendered in a case where the difference between Sections 73 and 74 of the Contract Act was being considered and whether loss would be required to be suffered for a claimant to obtain damages, even if pre-estimate is mentioned in the contract, under Section 74 of the Contract Act.

13. By relying on the said judgments, learned counsel argues that the present case concerns a claim for future loss and the right to claim the same had not arisen on the CIRP commencement date.

14. Citing Dr. Neil Andrews, Dr. Andrew Tettenborn and Dr. Graham Virgo in their treatise on "Contractual Duties: Performance, Breach, Termination and Remedies" (3rd Edition, Page 502), learned counsel argues that most claims for damages for breach of contract are brought in respect of losses already suffered. However, it is possible for a damages award/decree to include prospective future losses reasonably anticipated as a result of the defendant s wrong.

15. Learned counsel cites other authorities on the concept of future losses as expressed in international conventions, including the United Nations Convention on Contracts for the International Sale of Goods (CISG), UNIDROIT Principles of International Commercial Contracts and the Principles of European Contract Law (PECL).

16. Citing Pennant Hills Restaurants Pty Ltd. Vs. Barrel Insurances Pty Ltd., reported at (1981) 145 CLR 625, learned counsel for the petitioner argues that the High Court of Australia dealt with breach of contract leading to future losses and held that the loss for which damages were to be given was not a present loss but a loss that will certainly occur from time to time in the future, that is, future loss.

17. Citing Interoffice Telephones Ltd. Vs. Robert Freeman Co. Ltd., reported at (1958) 1 QB 190, a Queen s Bench Judgment, learned counsel advances the proposition that the court may allow claims for future losses in the form of loss of rental over the period which the contract yet had to be run at the time when the defendants repudiated. Learned counsel cites several other authorities on future loss, including Cookson Vs. Knowles [(1978) 2 WLR 978], a House of Lords judgment, Mallet Vs. McMonagle [(1970) A.C. 166], Crest Education Pvt. Ltd. Vs. Career Launcher Ltd. reported at 2023 SCC OnLine Del 3801, a Delhi High Court judgment, and a judgment of the Supreme Court in Dwarka Das Vs. State of Madhya Pradesh, reported at (1999) 3 SCC

500.

18. Relying on the said citations, it is argued by the petitioner that future losses are losses which shall be suffered in future, in this case after the CIRP commencement date, although the assessment is being done presently. Losses which are a mandatory pre-condition to an award for damages, when happening in future and/or anticipated to happen in future, after the CIRP Commencement date, cannot be wiped out by the Resolution Plan.

19. The exact assessment qua the counter claims cannot be done at present and cannot be done before evidence or trial.

20. Even if the future claims are to survive, the statement of counter claims cannot be rejected in part. For the last proposition, learned counsel cites Madhav Prasad Agarwal Vs. Axis Bank Limited, reported at (2019) 7 SCC 158 and Sejal Glass Limited Vs. Navilan Merchants Pvt. Ltd., reported at (2018) 11 SCC 780.

21. It is next contended that any observation contained in the Resolution Plan with regard to the counter claims of the petitioner would be void. Citing a judgment of this Court in Orissa Metaliks Private Limited Vs. Union of India and others, in WPA No. 10441 of 2024, it is argued that if a Resolution Plan purports to create new rights not referable to the IBC and de hors the ambit of the IBC itself, the said rights cannot be deemed to have been created. In the present case, it is submitted that new rights such as the right of extinguishment of claims born after the CIRP commencement date cannot be dealt with by the Resolution Plan, as it would be void.

22. Thus, it is contended by the petitioner that the award is opposed to the fundamental policy of Indian Law and shocks the conscience of the court; thus, liable to be set aside. Without any trial, the counter claims of the petitioner could not be wiped out without permitting the petitioner to lead any evidence with regard to the date on which the cause of action for such claims arose. Learned counsel cites SSangyong Engineering and Construction Company Limited Vs. NHAI, reported at (2019) 15 SCC 131 and Delhi Metro Rail Corporation Limited Vs. Delhi Airport Metro Express Pvt. Ltd., reported at 2024 SCC OnLine SC 522 on the scope of challenge under Section 34 of the 1996 Act.

23. Learned senior counsel appearing for the claimant/respondent submits that the order rejecting the claimant s application under Section 16 of the 1996 Act was passed at a juncture when the Resolution Plan had not yet been approved and, as such, the said order cannot operate as res judicata in respect of passing the interim award subsequently, after approval of the said Plan.

24. Learned senior counsel for the claimant cites Ghanashyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited, reported at (2021) 9 SCC 657 for the proposition that on the date of approval of the Resolution Plan by the Adjudicating Authority, all such claims which are not a part of the Resolution Plan shall stand extinguished and no person would be entitled to initiate or continue any proceedings in respect of a claim which is not a part of the Resolution Plan.

25. Learned senior counsel next cites Sri Vasavi Industries Limited and Another Vs. West Bengal State electricity Distribution Company Limited, in WPA No. 1936 of 2022, where this Court held,

relying on certain judgments of the Supreme Court, that the "Clean Slate" theory was propounded by the Supreme Court, according to which a successful resolution applicant cannot suddenly be faced with undecided claims after the acceptance of the Resolution Plan, as this would amount to a Hydra-head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who successfully takes over the business of the Corporate Debtor. All claims must be submitted to and decided by the Resolution Professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the Corporate Debtor. All such claims which are not a part of the Resolution Plan stand extinguished and no person will be entitled to initiate or continue any proceedings in respect of a claim which is not part of a Resolution Plan. The Division Bench judgment in the same matter, in MAT 646 of 2022 and CAN 1 of 2022, is also referred to in the said context.

26. Learned senior counsel for the claimant/respondent next cites Jaypee Kensington Boulevard Apartments Welfare Association and others Vs. NBCC (India) Ltd. and others, reported at (2021) 1 SCC 401, where it was reiterated that a resolution applicant cannot be made to suddenly encounter undecided claims after acceptance of the Resolution Plan. Citing Indian Oil Corporation Limited Vs. Arcelor Mittal Nippon Steel India Limited, reported at 2023 SC OnLine Del 6318, it is argued that even an application under Section 11 of the 1996 Act will be dismissed if the claim arose before approval of the Resolution Plan.

27. Furthermore, in the present case, the Resolution Plan clearly includes a clause that it extinguished all pending counter claims in arbitration.

28. Learned senior counsel appearing for the claimant argues that Section 31 of the IBC clearly envisages that the approval of the Resolution Plan is binding on all creditors. In the event the respondent/petitioner is aggrieved by Clause 2.4.1 of the Resolution Plan, which records that all pending counter claims in arbitration stand extinguished, the remedy before the petitioner was to move an appeal under Section 61(1) of IBC against the order of the National Company Law Tribunal (NCL) approving the plan. In the present case, no such appeal has been filed.

29. On the proposition of the respondent/petitioner that its claim had not crystallised into a debt, learned senior counsel for the claimant/respondent argues that the said argument is flawed and contrary to the express provisions of the IBC and the Regulations framed thereunder. "Claim" and "debt" have both been defined under the IBC and the Regulations thereunder. Section 3(6) defines „claim to be, inter alia, a right to payment whether or not such right is reduced to judgment, and Section 3(11) defines „debt to mean a liability or obligation in respect of a claim which is due from any person and includes a financial debt and an operational debt. Clause 7 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 provides that a person claiming to be an operational creditor other than workmen or employees of the Corporate Debtor shall submit, with proof to the interim Resolution Professional in person, by post or by electronic means, its claims. Clause 14 thereof provides for determination of the amount of such claims. In the instant case, the respondent/petitioner chose not to even file its claims before the Resolution Professional.

30. The IBC is a complete code in itself, and the judgments cited by the respondent/petitioner do not deal with cases relating to the IBC. As such, the principles laid down therein are not attracted to the present case.

31. The argument regarding the counter claims having arisen post-

approval of the Resolution Plan has not been pleaded by the respondent/petitioner in the affidavit-in-opposition to the application of the claimant for dismissal of the counter claims.

32. All the claims of the respondent/petitioner, it is argued, are pre-

approval of Resolution Plan. The approval of the Resolution Plan extinguishes all such claims.

33. Lastly it is argued that no case for setting aside of an arbitral award under Section 34 has been made out. The impugned interim award is not in contravention with the fundamental policy of Indian law or in conflict with the basic notions of morality or justice. In such context, learned senior counsel cites Delhi Airport Metro Express Private Limited Vs. Delhi Metro Rail Corporation Limited, reported at (2022) 1 SCC 131.

34. Relying on Gayatri Balasami Vs. ISG Novasoft Technologies Limited, an unreported judgment in SLP(C) Nos. 15336-15337/2021, it is argued that the question whether the court can modify an award under Section 34 of the 1996 Act is now referred to a Larger Bench of the Supreme Court.

35. Thus, it is argued that the present challenge ought to be dismissed.

36. Upon hearing learned counsel for the parties, it is clear that two important questions fall for consideration in the present case:

> (i) Whether the rejection of the respondent/petitioner s application under Section 16 of the 1996 Act operates as res judicata in respect of the impugned interim award.
>
> (ii) Whether the alleged future losses covered by the counter claim could be dismissed at the outset on the ground of approval of the Resolution Plan in respect of the claimant/company.

37. On the first issue, an evident distinction between the previous order of rejection of the objection as to jurisdiction and the present impugned interim award is that the Resolution Plan had not been approved on the date of the former whereas it already stood approved before passing of the latter. Such distinction is germane, since the entire line of reasoning for passing the impugned interim award was primarily that the approval of the Resolution Plan extinguishes all claims of creditors, including the respondent/petitioner, against the claimant-Company (Corporate Debtor). The basis of the decision turning down the objection to the arbitrator s jurisdiction under Section 16 of the 1996 Act was the moratorium under Section 14 of the IBC which attends a CIRP mandatorily. The learned Arbitrator held that since the claim and the counter claim were interconnected, the

moratorium did not prevent the Arbitrator from taking up the counter claim as well. There was no adjudication, nor was any issue raised in respect of the effect of approval of a Resolution Plan on the counter claim. The subsequent approval of the Resolution Plan, which extinguished the rights of the creditors, altered the scenario altogether, furnishing a fresh cause of action for the interim award. Hence, there cannot arise any question of the previous rejection of the Section 16 application operating as a bar to the learned Arbitrator deciding independently on the application for interim award.

38. Thus, this issue is decided in the negative, holding that the earlier order of rejection of the claimant s application under Section 16 of the 1996 Act did not operate as res judicata or prevent the impugned award from being passed.

39. On the second and cardinal issue, certain provisions of the IBC are required to be looked into. Section 31(1) clearly provides that the approval of a Resolution Plan by the Adjudicating Authority is binding inter alia on all creditors. The present respondent/petitioner is a financial creditor vis-a-vis the claimant-company under the IBC and as such, the Resolution Plan is squarely binding on it.

40. The present petitioner, being a financial creditor under Section 5(7) of the IBC, was entitled and duty-bound to make all claims before the resolution professional. Section 18(1)(b) of the IBC provides that the interim Resolution Professional shall receive and collate all the claims submitted by creditors to him. Section 31(1), as discussed above, imparts a binding colour to the approved Resolution Plan, thus extinguishing all claims of creditors in respect of the Corporate Debtor.

41. Section 21 of the IBC provides that the Committee of Creditors (CoC) shall comprise of all financial creditors of the Corporate Debtor, thus, bringing within its fold the present petitioner as well insofar as the claimant-company is concerned, which was the Corporate Debtor.

42. Hence, not only did the petitioner have the right to make claims before the resolution professional, the petitioner was statutorily a component of the CoC, which approved the Resolution Plan at the first instance. Only after passing through the screen of the CoC did the Resolution Plan reach the table of the Adjudicating Authority, that is, the NCLT, which finally approved the plan, making it binding on the petitioner under Section 31 of the IBC.

43. Hence, there is no scope of the petitioner arguing that it did not have an opportunity to make the self-same claims, which were made before the learned Arbitrator by way of counter claims prior to the approval of the Resolution Plan, before the Resolution Professional in the CIRP. The CIRP commenced on September 17, 2020 and culminated upon approval of the Resolution Plan by the NCLT on October 13, 2023. The counter claim had been filed by the petitioner on May 12, 2023, that is, five months prior to the approval of the Resolution Plan. However, the petitioner chose not to file the said claims before the Resolution Professional, even if for abundant caution, irrespective of the filing of the counter claim before the Arbitrator.

44. In Clause 12.4.1 of the finally approved Resolution Plan, it is mentioned in unequivocal language that other than the payments/settlements under the said Resolution Plan, no other payments or

settlements (of any kind) will have to be made to any other person in respect of the claims of any person or Governmental Authorities against the claimant-Company (whether or not filed or admitted by the Resolution Professional). It was further provided that all such claims against the Company (claimant) including counter claims under any pending arbitration proceedings, along with related proceedings, including proceedings for enforcement of any security/security interest, shall stand irrevocably and unconditionally abated, discharged, settled and extinguished in perpetuity on the NCLT Approval Date.

45. The said clause is binding on the petitioner in terms of Section 31 of the IBC, which is a complete code in itself. It has been consistently held by the Supreme Court, as exemplified in Ghanashyam Mishra (supra), that on the date of approval of the Resolution Plan by the Adjudicating Authority, all claims against the Corporate Debtor which are not a part of the Resolution Plan shall stand extinguished and no person will be entitled to initiate or continue any proceeding in respect of a claim which is not a part of the Resolution Plan. The logic behind this was given by the Supreme Court in the "Clean Slate" theory propounded in Essar Steel Indian Limted Vs. Satish Kumar Gupa and others, reported at (2020) 8 SCC 531, it being that a successful resolution application cannot suddenly be faced with undecided claims after the acceptance of the Resolution Plan, as this would amount to a Hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant which successfully takes over the business of the Corporate Debtor.

46. Thus, there cannot be any manner of doubt that the Resolution Plan is binding on the petitioner and the petitioner cannot resile from the same, which would automatically entail the extinction of the petitioner s claims and consequential dismissal of the counter claims of the petitioner at the outset.

47. However, a further argument, which is quite attractive at the first blush, has been advanced by the respondent/petitioner. It is contended that at least a part of the counter claims would arise after the initiation of the CIRP and, thus, would fall beyond the pale of the authority of the Resolution Professional and, thus, by necessary implication, outside the Resolution Plan contemplated in the IBC.

48. There are two cardinal fallacies in such logic.

49. The first fallacy is that the claims that can come within the ambit of the Resolution Plan do not stop on the date of initiation of the CIRP but continue up to the approval of the Resolution Plan by the Adjudicating Authority. The language of Section 31(1) of the IBC is that once the Resolution Plan is approved, it shall be binding, inter alia, on the creditors. Nothing in the IBC provides that claims arising between the initiation of the CIRP proceedings and the approval of the Resolution Plan cannot also come within the purview of the plan. In fact, it is incumbent upon the Resolution Professional to receive and collate all claims submitted by the creditors to him under Section 18(1)(b) of the IBC. Such receipt and collation may very well continue till the plan is formulated and placed before the CoC, which again comprises of all financial creditors. After moving through the CoC scrutiny, the plan reaches culmination in its approval by the Adjudicating Authority (NCLT). As such, the Resolution Professional may receive and collate claims at any point of time before the

Resolution Plan is finalised. In the present case, the counter claims which have been shut out by the interim award were filed on May 12, 2023, five months prior to the approval of the Resolution Plan on October 13, 2023. Thus, as on the date of approval of the plan, the cause of action for filing the claims had already arisen. The last date up to which the counter claims extend is March 31, 2023 (as per the claim contained in Serial No. 6 of the chart given in paragraph no. 24 of the counter claim contained in the Statement of Defence), whereas the Resolution Plan was approved by the NCLT thereafter on October 13, 2023.

50. As discussed above, pre-CIRP as well as intra-CIRP claims can come within the purview of the Resolution Plan, although post-CIRP claims cannot, obviously be covered by the Resolution Plan.

51. The claimant has rightly relied on the definitions of the expressions "claim" and "debt" as provided in sub-sections (6) and (11) of Section 3 of the IBC respectively. "Claim" includes a right to payment, whether or not such right is reduced to judgment, and "debt" means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt.

52. Thus, the expression "claim" is an inchoate right to payment, whether or not such right is reduced to judgment. This also includes claims which, in the perception of the claimant, may ultimately reach fruition upon an award being passed on the same. There is a patent distinction between a „claim , which is a perceived entitlement of a claimant, and a „final entitlement , which is the fruition of such claim in an award, which crystallises the rights of the claimant finally.

53. The expression used throughout the IBC is „claim and not „entitlement . As on the date of filing of the counter claim, the cause of action for the same had already arisen.

54. In fact, the counter claim was made on May 12, 2023 and the filing of the counter claim itself is sufficient proof of the fact that even as per the perception of the present petitioner, the cause of action for the said counter claims had ripened before that date, although they might have yielded fruit later, on the passing of the award, that too if granted. Hence, as on the date of the filing of the counter claim, that is, May 12, 2023, the claims had arisen within the contemplation of Section 3(6) of the IBC.

55. The mere fact that the same would extend beyond the domain of the CIRP if finally granted is immaterial, since it is not the fruition of the claim which is contemplated to give a terminus to the same but the initial right to make the claim. Even if the claim pertains to a post-CIRP period, the claim itself arose before the filing of the counter claim and, thus, stood extinguished at the bud the moment the Resolution Plan was finally approved. Even prospective or future losses contemplated in the claim would automatically stand extinguished with the approval of the Resolution Plan, since the date of reference for the purpose of such extension is not when the claims ultimately culminate in a possible award but the date on which the cause of action for making the claims arises.

56. It has been repeatedly held, time and again, by different authorities including the Supreme Court that all claims, even if pending on the date of the Resolution Plan stand extinguished upon its

approval. The convoluted arguments advanced by the petitioner on the meaning of future losses are not relevant in the context of the IBC, since even if the losses continue to occur prospectively, the seed of the said losses already came into existence in a nascent form on the date of making of the claim.

57. The second fallacy in the „future loss argument is that Clause 2.4.1 of the approved Resolution Plan clearly and specifically provides that even pending counter claims in arbitration would stand extinguished. Thus, in terms of Section 31 of the IBC and as per the ratio laid down in Ghanashyam Mishra (supra), the claims incorporated in the petitioner s counter claims pending before the learned Arbitrator stood finally extinguished with the approval of the Resolution Plan and need not or could not have been further adjudicated by the Arbitral Tribunal.

58. Thus, the second issue is decided against the petitioner and it is hereby held that the alleged future losses covered by the counter claim could be dismissed at the outset on the ground of approval of the Resolution Plan in respect of the claimant/company.

59. Hence, the learned Arbitrator was perfectly justified in dismissing the counter claims of the respondent/petitioner at the inception in view of the approval of the Resolution Plan in respect of the claimant- Company.

60. Accordingly, no ground for interference with the impugned interim award passed under Section 31 (6) has been made out under Section 34 of the 1996 Act, since this Court does not find any patent illegality or anything to shock the conscience sufficiently to set aside the said interim award. The learned Arbitrator arrived at quite plausible and legally correct findings in dismissing the counter claims.

61. Hence, AP-COM No. 532 of 2024 is dismissed on contest, thereby affirming the impugned interim award dated April 3, 2024.

62. There will be no order as to costs.

63. Interim order, if any, stands vacated.

64. Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.) Later After the above judgment is passed, learned Counsel for the petitioner seeks an extension of the interim order which had been passed staying the arbitration proceeding. However, upon considering the prima facie case for the proposed appeal, such prayer is refused.

(Sabyasachi Bhattacharyya, J.)