

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: MA 128/2017
(arising in CC 33/2015)

[2017] SCSC

VIJAY CONSTRUCTION (PROPRIETARY) LIMITED
Applicant

versus

EASTERN EUROPEAN ENGINEERING LIMITED
Respondent

Heard: 31 May 2017, 2, 9, 12, 13 and 14 June 2017

Counsel: Bernard Georges for applicant
Basil Hoareau for respondent

France Bonte together with Elvis Chetty for respondent

Delivered: 14 June 2017

ORDER ON MOTION

Robinson J

[1] Applicant is Vijay Construction Proprietary Limited (hereafter "*Vijay*"). Respondent is Eastern European Engineering Limited (hereafter "*EEEL*"). Mr. Basil Hoareau withdrew his appearance, for EEEL, during the course of submissions, on 31 May, 2017. Mr. France Bonte and Mr. Elvis Chetty now appear for EEEL.

- [2] The background facts to these proceedings are as follows. On 9 May, 2017, the court, in the exercise of its discretion, was satisfied that it should make an order staying execution of the foreign arbitral award and of the Judgment maintaining the foreign arbitral award, pending appeal, subject to the following conditions :

[14] The court directs that within 21 days from the date of the Order on Motion Vijay] enters into good and sufficient security to the satisfaction of the court in the sum of Euro Eight Million only in the form of money or properties including the charging of any properties to the satisfaction of the court. The security shall be deposited with the Registrar of the Supreme Court."

- [3] Vijay, by way of application, dated 29 May, 2017, submits the following form of security to the court :

"... vehicles, vessels, machinery and equipment set out in the attached schedule, being part of the Applicant's inventory of assets, amounting to US\$10, 165, 545.77/- in value. The security proposed is that the assets in the schedule be secured by an injunctive order of the court or by registration of a security interest over each item in the attached schedule under the Security on Movables Act, allowing their continued use, but not their disposal, pending the decision of the Seychelles Court of Appeal."

The application, of Vijay, is supported by the evidence of Mr. Kaushalkumar Patel in the form of an affidavit dated 29 May, 2017. Mr. Kaushalkumar Patel verily believes that Vijay has complied with the conditions of stay. Paragraph 4 of the affidavit states :

"while I accept that security should be real and reasonable, I verily believe that the security proposed will satisfy the Ruling of this Honourable Court while allowing the company to continue operation until the appeal is heard. This will, I verily believe, serve the purposes of securing the sum ordered by this Court and staying the enforcement of the judgment with no adverse effect on the parties pending the review of the matter by the Seychelles Court of Appeal."

- [4] EEEL strongly objects to the security in the form of movable assets. Para [16], of EEEL's affidavit, states in part, " ... the applicant is suggesting a limited list of movables which I [Vadim Zaslavov] verily believe do not amount to US \$ 10, 165, 645. 77/- as this sum has

been grossly inflated.". Consequently, paras [19] through to [27], of EEEL's affidavit, state the following for the consideration of the court :

"[19] In view of the above in accordance with the said Ruling the Court would be satisfied only if the money in the amount of Eight Million Euro be deposited with the Court before 1st day of June 2017 otherwise the execution shall continue since the Applicant did not comply with the Ruling. Such practice is slightly respected by the jurisprudence of the Seychelles Supreme Court ...

[20] The Respondent verily believes that if this list of movable assets are to be accepted as security, an independent valuation must be carried out and should be monitored by the Respondent as I verily believe it does not meet the conditions provided by Robinson J on the 9th day of May 2017 to stay the execution.

[21] That during the period it takes the independent valuers to assess the worth of the movable assets provided as security the Respondent sought to be provided with sufficient conditions in the way of depositing the money with the Court so not prejudice the Respondent.

[22] It would be reasonable that the Applicant is ordered not to deplete its accounts and that the statement of accounts are provided to the Court in order to monitor the said accounts during the evaluation the movable assets of the Applicant.

[23] In the event any new movable or immovable assets are procured by the Applicant it shall form part of the list of assets acting as security for judgment delivered by Robinson J.

[24] That all the movable assets provided by the Applicant is kept under the possession of the Registrar of the Supreme Court as it is in the Ruling dated 9th of May 2017 during the valuation and pending the outcome of any appeal.

[25] That the movable assets are not to be used pending the outcome of any appeal by the Applicant as the use of such assets would only depreciate its value and there would be a high risk of damage and or accidents to the said assets.

[26] That the provisions of movable assets as security would not be in conformity with the Ruling of Robinson J on 9th May 2017 stating that 8, 000, 000 Euros shall be provided as security as movable assets will continually depreciate in value.

[27] That I verily believe the Applicant should have its accounts seized in order not to prejudice the Respondent as the Applicant to date has not acted in good faith and has continually attempted to find ways to circumvent the orders of the Court ..."

[5] The court has considered the application of Vijay and evidence of EEEL. However, for the moment the court is only concerned with whether Vijay has entered into "*good and sufficient security to the satisfaction of the court*". During the course of submissions, on 31 May, 2017, 2 June, 2017, 12 June, 2017, 13 June, 2017, and 14 June, 2017, EEEL and Vijay conjointly consented to an independent evaluation of the miscellaneous movable assets and submitted nominations, in open court, to the court. The court, in the exercise of its discretion, is satisfied that it should make such a consent order to assist it in determining whether Vijay has complied with the conditions of stay.

[6] For the reasons stated above, the court makes the following consent orders :

(a) appoints the following independent experts :

(i) Captain Pierre GrandCourt and Mr. Idney Basset;

(ii) Mr. Hedson Mathieu; and

(iii) Mr. Stanley Valentin; and

(b) directs them, namely:

(i) Captain Pierre GrandCourt and Mr. Idney Basset, to evaluate the following movable assets:

(aa) "*vessels*" more fully described in Schedule 1, p1 and depicted in photographs, as printed;

(ii) Mr. Hedson Mathieu, to evaluate the following movable assets:

(aa) "*plants and vehicles*" more fully described in Schedule 2, pp1 through to 6 and depicted in photographs, as printed;

(iii) Mr. Stanley Valentin, to evaluate the following movable assets:

(aa) "*Buildings – TEMPORARY MOVABLE*" more fully described in Schedule 3.

[7] The court, in the exercise of its discretion, makes the following further orders :

- (a) directs the experts, so appointed, to each compile a report of the evaluation and send the said report to the Registrar of the Supreme Court, on or before 5 July, 2017; and
- (b) directs Vijay and EEEL to pay the costs of the independent evaluation, including the costs relating to the report of each of the expert, on a 50:50 basis.

[8] The orders are made pending further orders of the court.

[9] The matter is made returnable on 5 July, 2017, at 11 a.m..

Signed, dated and delivered at Ile du Port on 14 June 2017

F Robinson
Judge of the Supreme Court