

GAHC010051992024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Review.Pet./48/2024

BELSERI TEA CO. (INDIA) PVT LTD
A PVT. LTD. INCORPORATED UNDER THE COMPANIES ACT, 1956 AND
COMPANIES ACT, 2013 AND HAVING ITS HEAD OFFICE AT 21 RN
MUKHERJEE ROAD, KOLKATA, WEST BENGAL- 700001 AND ITS FACTORY
AT 3E, 3RD FLOOR, 724, PEACE ENCLAVE, ULUBARI, GHY-07, ASSAM

2: ASHOK KUMAR AGARWAL
H/NO 168
R.G.BARUAH ROAD
P.O. DISPUR
GHY-05
ASSAM

3: SWETA AGARWAL
H/NO 168
R.G.BARUAH ROAD
P.O. DISPUR
GHY-05
ASSAM

4: DIBYANSHU AGARWAL
HOUSE NO 36/37
SHREENAGAR
BYELANE NO-1 ABC
OPP. HOTEL GATEWAY GRANDUER
G.S.ROAD
GHY-05
ASSAM

5: TANISA AGARWAL
HOUSE NO 36/37
SHREENAGAR
BYELANE NO-1
OPP. HOTEL GATEWAY GRANDUER

G.S.ROAD
PIN-781005
ASSA

VERSUS

GEETA R PATEL AND ANR
D/3, JEMS CO-OP SOCIETY, OPP. NEHRU FOUNDATION, BODAKDEV,
AHMEDABAD, GUJARAT, PIN- 380054, INDIA

2:RISHIT RAVINDRA PATEL
D/3
JEMS CO-OP SOCIETY
OPP. NEHRU FOUNDATION
BODAKDEV
AHMEDABAD
GUJARAT
PIN- 380054
INDI

Advocate for the Petitioner : MS. M L GOPE

Advocate for the Respondent : MR. P BORAH

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

12.06.2024

1. Heard Mr. J. Roy, learned Senior Counsel assisted by Ms. N. Hawelia, learned counsel for the review petitioner. Also heard Mr. Rohit Kr. Keshri, learned counsel for the respondents.

2. Mr. J. Roy, learned Senior Counsel for the review petitioner submits that the review petitioner's Section 11(6) petition under the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the "1996 Act") had been dismissed, vide impugned order dated 09.02.2024 passed in Arb.P.2/2023, on

the basic premise that the respondents had filed C.P. No.202/KB/2023 before the National Company Law Tribunal (NCLT), prior to the filing of Section 11(6) application. He however submits that Section 11(6) application had been filed prior to the respondents' case in the NCLT, Kolkata. He accordingly prays that the impugned order should be set aside and the review should be allowed.

3. Mr. Rohit Kr. Keshri, learned counsel for the respondents, on the other hand submits that the subject matter in issue can only be decided by the NCLT, Kolkata and not by an Arbitrator. He further submits that the review petitioner had been given an advance copy of the petition to be filed by the respondents before the NCLT, Kolkata, in the month of September, 2022. However, the respondents' case first order was passed by the NCLT, Kolkata on 24.07.2023. He further submits that filing of the case before the NCLT, Kolkata was done on 09.02.2023.

4. I have heard the learned counsels for the parties.

5. On a perusal of paragraph nos.5, 7 & 14 of the impugned order, the same shows that the petition filed by the review petitioner had been dismissed on the ground that the Section 11(6) application under the 1996 Act had been filed subsequent to the case filed by the respondents before the NCLT, Kolkata. However, the same is apparently not correct, as can be seen from the submission made by the parties and also from the records. Section 11(6) application under the 1996 Act had been filed on 04.01.2023. However, the NCLT, Kolkata order is of 24.07.2023 and filing date has been shown as 09.02.2023, i.e. subsequent to the filing of Section 11(6) application of the review petitioner.

- 6.** In view of the error being apparent on the face of the record and dismissal of the writ petition being made on the ground that the case had been filed before the NCLT, Kolkata earlier in point of time, this Court finds that the review petitioner has made out a case for review. Accordingly, the impugned order dated 09.02.2024 passed in Arb.P.2/2023 is hereby recalled.
- 7.** Registry to list Arb.P.2/2023 on 25.07.2024.
- 8.** The review petition is accordingly disposed off.

JUDGE

Comparing Assistant