

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

SHRI BALAJI INFRADEVELOPERS PRIVATE LIMITED AND ANR.
Versus
SREI EQUIPMENT FINANCE LIMITED AND ORS.

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date :8th July, 2021

(Via Video Conference)

Appearance:

Mr. Nitish Ojha, Adv.

Mr. Arif Ali, Adv.

Mr. Sarban Bhattacharjee, Adv.

Mr. Ayan Chakraborty, Adv.

Mr. Hare Ram Singh, Adv.

The Court: This is an application for terminating the mandate of a learned Sole Arbitrator in the arbitral proceedings which is presently ongoing between the petitioners and the respondents.

The petitioners herein are two of the respondents before the Arbitrator. The ground urged by learned counsel appearing for the petitioners is that the Arbitrator is disqualified from being appointed by reason of the Seventh Schedule to The Arbitration and Conciliation Act, 1996. Counsel places the letter of appointment of the Arbitrator dated 7th August, 2020 by the authorised signatory of the respondent nos. 1 and 2 and submits that the appointment is barred under Clause 5 of the Seventh Schedule. Counsel also places the minutes of the sittings to show that although the point with regard to the Arbitrator's conflict of

interest was made on behalf of the petitioners before this Court, the said objection was not decided by the Arbitrator. The minutes dated 27th April, 2021 have been given particular emphasis to show that the Arbitrator continued to disregard the objection taken on behalf of the petitioners by taking recourse to technical issues.

Learned counsel appearing for the respondent no.1 submits that there is no evidence on record to show that the Arbitrator is disqualified from the mandate under the Seventh Schedule of the Act.

Upon hearing learned counsel for the parties, it appears that the records do not show that the Arbitrator is debarred from acting as such under the provisions of Section 12 of the Act read with the Seventh Schedule. The declaration given by the Arbitrator on 24th August, 2020 indicates that there are no circumstances disclosing any past or present relationship or any interest in any of the parties or in relation to the subject-matter in dispute. Therefore, in the absence of any material to show that such declaration was false was subsequently proved to be false or the Arbitrator has an interest either in the parties to the arbitration or the subject-matter of the dispute, this Court cannot draw any inference of a conflict of interest on the part of the Arbitrator. Clause 5 of the Seventh Schedule of the Act makes it clear that the Arbitrator would be disqualified if the Arbitrator is a part of the management of any of the parties or has a controlling influence over that party or is an affiliate of one of the parties or is directly involved in the matters in dispute in the arbitration. The petitioners have not shown any material which would satisfy the conditions contemplated in Clause 5 of the Seventh Schedule. The minutes relied upon during the course of

submissions would at best show that the Arbitrator has delayed the adjudication of the objection taken on behalf of the petitioners. The minutes dated 27th April, 2021 record that the next sitting would be held on 9th June, 2021 and that no further adjournments would be given to any of the parties. There is no record of what transpired on 9th June, 2021 or the next date fixed in the arbitration proceedings.

Delay in conducting the arbitration proceedings is different to the Arbitrator being disqualified under any of the conditions envisaged in the Seventh Schedule to the Act and cannot be confused with an apprehension of bias which is a serious charge. In the absence of any corroborative documents, this Court is disinclined to draw any conclusion of a likelihood of bias on the part of the Arbitrator.

Besides the above, the petitioners had four months to object to the appointment of the Arbitrator which the petitioners failed to do and took such objection only in January, 2021 after commencement of the arbitration proceedings.

In view of the above, AP/263/2021 is disposed of with a direction to the Arbitrator to make best efforts to decide the objection taken by the petitioners without any further delay.

(MOUSHUMI BHATTACHARYA, J.)