

IN THE HIGH COURT OF ORISSA AT CUTTACK

**W.P(C) No.3203 of 2022
(Through hybrid mode)**

M/S. Blue Line Resorts Pvt. Ltd. ***Petitioner***
Mr. Avijit Pal, Advocate

-versus-

M/S. Hotel Sea Point Pvt. Ltd. ***Opposite Party***
Mr. S. Routray, Advocate

CORAM: JUSTICE ARINDAM SINHA

ORDER
06.07.2022

Order No.

- 02.**
1. Mr. Pal, learned advocate appears on behalf of petitioner and submits, judicial review of order dated 27th December, 2021 is sought by his client. The order was made in his client's petition under section 29A (5) of Arbitration and Conciliation Act, 1996. The Court below dismissed it.
 2. He submits, there is confusion created on identity of his client. The reference was commenced on notice issued by opposite party. Said opposite party, thereafter, filed Arbitration Petition no.39 of 2013 under section 11(6) of Arbitration and Conciliation Act, 1996. The request petition was disposed of by order dated 5th November, 2015 appointing sole arbitrator. It cannot be disputed that the reference was compelled pursuant to deed of lease dated 1st May, 2012, in which

clause-18 provided for arbitration. He hands up copy of the deed to demonstrate that his client had executed it as 'Blue Line Resorts Pvt. Ltd.', though description of his client was erroneously given in the deed as 'Blue Line Hotel and Resorts Pvt. Ltd'. It is an inadvertent error in writing of the deed, being relied upon by opposite party to avoid conclusion of the reference by award, if possible. He submits further, there is yet another hurdle faced by his client inasmuch as its name was struck off by the Registrar of Companies (ROC) for not filing return. He hands up order dated 26th April, 2022 directing restoration of his client as a duly registered company, directed by National Company Law Tribunal (NCLT), Cuttack Bench.

3. He submits, there should be extension of time to enable the tribunal to pass award. He reiterates, the arbitration was compelled by opposite party as claimant. Said opposite party is now resisting conclusion of the reference. Its motives are obvious.

4. Mr. Routray, learned advocate appears on behalf of opposite party and submits, petitioner with oblique motive persuaded his client to grant lease in respect of its property, a hotel. Petitioner took over the hotel and has run its business to the ground. They did not pay lease rent. As such, his client sought arbitration by notice. They were then constrained to request The Hon'ble The Chief Justice for appointment

of arbitrator.

5. He submits, there should not be interference with impugned order inasmuch as there is no illegality or material irregularity therein. The reasons have been given after having heard the parties. Upon application of mind the Court below found that taking into consideration order dated 9th April, 2021 passed in the request petition under section 11(6) and conduct of petitioner in having suppressed same, the petition for extension of time was held to be not maintainable in the eye of law and dismissed. In the facts and circumstances before the Court below it was a possible view taken.

6. Mr. Routray's yet further submission is that section 29 A was brought in by the amending Act. It is prospective in application. It cannot apply to the arbitration proceeding, it having commenced much prior to the amendment Act. Effective date for application of the amendments is 23rd October, 2015. He relies on **judgment dated 10th November, 2021** of the Supreme Court in **Civil Appeal no.6112 of 2021 (Ratnam Sudesh IYER Vs. Jackie Kakubhai Shroff)**, inter alia, paragraph 18 in the print handed up. Therein the Court relied on its earlier judgment in **Board of Control for Cricket in India v. Kochi Cricket Pvt. Ltd.**, reported in **(2018) 6 SCC 287** to declare on reference made to section 26 of the 2015 amendment Act, nothing

contained in the amendment Act would apply to arbitration proceedings commenced in accordance with provisions under section 21 of the principal Act, before commencement of the amending Act, unless parties otherwise agreed. On query from Court he submits, there is no agreement between parties that the amending Act would be made to apply to the reference. As such also the petition under section 29 A (5) was not maintainable.

7. The Arbitration and Conciliation Act, 1996, when enacted, referred to as the principal Act as above, did not have a provision limiting the mandate by time. It is clear, parties have not agreed that provisions in the amendment Act of 2015 would be made applicable to the reference, commenced much prior thereto. In the circumstances, it cannot be said that mandate of the tribunal was limited by time. It therefore appears, the petition made under section 29A(5) is misconceived. Since the Court below had dismissed the same on finding it otherwise not maintainable, the result of impugned order does not need interference. However, it is made clear that the contentions of earlier extension granted, it having become final and the petition thereafter made under section 29A(5), do not need adjudication since, as aforesaid, the petition itself is misconceived. The tribunal is expected to expeditiously deal with and conclude the

reference, there being no limit by time on the mandate

8. The writ petition is disposed of as above.

(Arindam Sinha)
Judge

Prasant

