

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**ARBP No. 11 of 2022**

***Union of India***

***.... Petitioner***

Mr. P.K. Parhi, ASGI

Along with Mr. S.S. Kashyap, CGC

*-versus-*

***Rashmi Metaliks Ltd.***

***.... Opposite Party***

Mr. Kishore Dutta, Senior Advocate

**CORAM:  
THE CHIEF JUSTICE**

**ORDER**

**22.07.2022**

**Order No.**

04. 1. Mr. P.K. Parhi, learned Assistant Solicitor General states at the outset that the short fall of the Court fee will be made up today itself.
2. This is an application by the East Coast Railway (ECR) under Sections 14 and 15 of the Arbitration & Conciliation Act, 1996 (Act) praying that the mandate of the 3-Member Arbitration Tribunal which has been constituted to adjudicate the disputes between the ECR and the Opposite Party be terminated.
3. There are two limbs of arguments advanced by Mr. P.K. Parhi, learned ASGI and Mr. S.S. Kashyap, learned Central Government Counsel. One is that by efflux of time, and in the absence of extension of the period for completion of the arbitration

proceedings under Section 29-A of the Act, the mandate of the Arbitrator has terminated.

4. Secondly, their argument is that on reading of Section 14(1)(a) of the Act read with Section 14 (2) and Section 18 of the Act, the Arbitral Tribunal should be declared to have become *de jure* unable to perform its functions because it has failed to take up for consideration certain applications filed by the ECR before it objecting to the receipt of documents by the Tribunal from the Opposite Party in support of its claims.

5. Mr. Kishore Dutta, learned Senior Counsel appearing for the Opposite Party refers to the order of the Supreme Court of India passed on 10<sup>th</sup> January, 2022 in Suo Motu Writ Petition (C) No.3 of 2020 whereby the COVID period i.e., 15<sup>th</sup> March, 2020 to 28<sup>th</sup> February, 2022 was held to be excluded even for the purposes of calculation of limitation in the context of Section 29-A of the Act. As a result, Mr. Dutta, learned Senior Counsel submits, notwithstanding, that the Opposite Party itself had earlier filed Arbitration Petition No.2 of 2022 in this Court under Section 29-A of the Act asking for extension of time for completion of the arbitral proceedings, it had withdrawn the said petition.

6. Mr. Dutta's submits that after applying the aforementioned order of the Supreme Court dated 10<sup>th</sup> January, 2022 the dated by which the arbitral proceedings should be completed works out to 5<sup>th</sup>

October, 2022. In that view of the matter, according to Mr. Dutta, it cannot be said that by efflux of time the mandate of the arbitral Tribunal has come to an end.

7. On merits, Mr. Dutta submits that whatever grievance the ECR may have about the conduct of proceedings, it is always open to the ECR to urge such grounds in the event that the award is adverse to the ECR on any aspect and it is required to challenge it under Section 34 of the Act.

8. The above submissions have been considered. On the first aspect on whether the mandate of the Tribunal should be held to have been terminated by efflux of time, the Court finds that prior to the onset of the COVID period, i.e., 15<sup>th</sup> March, 2020 onwards, the time for making the award stood extended on 1<sup>st</sup> March, 2020 by six months, with the consent of the parties. In normal course, therefore, on the expiry of six months on 5<sup>th</sup> July, 2020 the mandate would have ended. However, the COVID period intervened and the entire COVID period, i.e., 15<sup>th</sup> March, 2020 to 28<sup>th</sup> February, 2022 now stands excluded for the purposes of limitation in terms of Section 29-A of the Act. The Court is not presented with any counter calculation by the ECR to dispute the fact that the time for completion of the arbitral proceedings and pronouncement of the award stands extended up to 5<sup>th</sup> October, 2022. In that view of the matter, it cannot be said that the mandate of the Arbitrator has come

to an end because of non-extension of time for completion of arbitration proceedings.

9. As far as the proceedings before the arbitral Tribunal itself is concerned, if there are procedural lapses, as contended by both Mr. Parhi and Mr. Kashyap, then it will be open to the ECR, if it is so required to do, to assail the award if it happens to be adverse to the ECR on such other grounds that are available to the ECR at the appropriate stage.

10. The Court is not persuaded that merely because the arbitral Tribunal has not yet passed orders on the applications of the ECR for whatever reason, the provisions of Section 14(1)(b) read with Section 14(2) and Section 18 of the Act straightway get attracted. In the present jurisdiction while entertaining an application under Section 14 and 15 of the Act, this Court is not acting as an appellate authority or a reviewing authority. It is also not empowered to issue a mandamus to the Tribunal on whether it should or should not deal with an application that is pending before it. Certainly, these are not matters within the scope of Sections 14 and 15. To reiterate, Section 14(1)(a) is attracted when the Court is satisfied that the Tribunal has become '*de jure or de facto*' unable to perform its functions. The mere failure to consider an application pending before the Tribunal at any time prior to the termination of its mandate would not, in the considered view of the Court, straightway attract the conditionality spelt out in Section 14(1)(a) without anything more. It must be

recalled here that the Tribunal began its sittings on 27<sup>th</sup> February, 2019 and keeping in view the COVID period, it cannot be said that the arbitration proceedings had been unduly delayed because of the acts of commission or omission of the Tribunal.

11. Therefore, for the aforementioned reasons, the Court is not satisfied that any ground has been made out in terms of Section 14(1)(a) read with Section 14(2) and Section 18 of the Act requiring the Court to exercise its jurisdiction to declare the mandate of the Tribunal as having terminated.

12. The Court clarifies that it has not expressed any view on the merits of the contentions of the parties on their respective claims and counter claims or even on any of the other grounds urged regarding alleged procedural lapses of the Tribunal. These are matters on which it will be open to the parties to advance their contentions at the appropriate stage after the award is pronounced by the Tribunal.

13. The arbitration petition is accordingly dismissed.

***(Dr. S. Muralidhar)***  
***Chief Justice***