

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

AP/175/2023

M/S. PALASH TRADING CORPORATION AND ORS.
VS.
THE GENERAL MANAGER, EASTERN RAILWAY FAIRLEY PLACE AND ORS.

BEFORE :
THE HON'BLE JUSTICE SABYASACHI BHATTACHARYYA
Date : 18th April, 2023

Appearance :
Mr. Dwaipayan Basu Mallick, Mr. Subhankar Das, Advs.
.....for petitioner.
Mr. Pramit Kumar Ray, Sr. Adv.,
Mr. Rivu Dutta, Adv.
...for respondents.

The Court : -Undisputedly, there is no arbitration clause in the agreement between the parties. Initially, an Arbitral Tribunal was formed with three officers of the Eastern Railway. The petitioner had disputed such constitution on the ground that the petitioner had not given consent for such appointment. However, when the matter came up before a Co-ordinate Bench, vide order dated November 20, 2018, the learned Single Judge [since deceased] had directed the General Manager, Eastern Railway to forthwith take steps for induction of a new arbitrator.

However, at this juncture, the petitioners point out that as per the amended provisions of the Arbitration and Conciliation Act, 1996, in terms of the 2015 amendment, the officers of the Eastern Railway are ineligible to be appointed as arbitrators.

The learned Senior Advocate appearing for the respondents contends that previously the petitioners had consented, knowing fully well about the 2015 amendment, to the appointment of officers of the Eastern Railway as arbitrators.

Be that as it may, there is no dispute between the parties to the extent that the matter is required to be referred to arbitration. Learned senior counsel for the respondents also submits that the claim is ex facie time-barred inasmuch as the

petitioners have stated in paragraph 34 of the present application under section 11 of the 1996 Act that the cause of action of the instant application arose on May 3, 2019, whereas the present application has been filed in the year 2023.

However, such allegation is refuted on behalf of the petitioners and learned counsel for the petitioners contends that the said statement in the application, per se, cannot indicate that the name is ex facie time barred, since there are subsequent circumstances which are required to be taken note of.

Hence, it transpires that the parties are ad idem regarding the matter being arbitrable and there being an arbitration clause within the purview of which the present dispute has arisen.

In so far as the tribunal previously constituted, comprised of the officers of the Eastern Railway, is concerned, such composition, as rightly submitted by learned counsel for the petitioners, is contrary to the 2015 amendment to the 1996 Act. It is well-settled that there cannot be any estoppel against the statute, particularly when the statute in question governs the specific field of arbitration, within the aegis of which the present appointment is sought.

In such view of the matter, a neutral arbitrator is required to be appointed. Hence, AP/175/2023 is allowed, thereby appointing Mr. Suddhasatwa Banerjee [M.9874669520], an advocate practising in this Court and a member of the Bar Library Club, as the sole arbitrator to resolve the dispute between the parties, subject to obtaining declaration/consent under section 12 of the Arbitration and Conciliation Act, 1996.

It is, however, made clear that the objection as to limitation and maintainability, along with all other points on merits, are kept open to be decided by the arbitrator.

(SABYASACHI BHATTACHARYYA, J.)