

ORDER SHEET

AP/701/2023

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE
(Commercial Division)

SREI EQUIPMENT FINANCE LTD.
Versus
KISHOR HIMMATLAL AGARWAL AND ANR.

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 12th October, 2023.

Appearance:

Mr. Swatarup Banerjee, Adv.

Mr. Sariful Haque, Adv.

Mr. Rajib Mullick, Adv.

Ms. Sonia Mukherjee, Adv.

Mr. Biswaroop Ghosh, Adv.

...for the petitioner

Mr. Supratic Roy, Adv.

Mr. Shuvajit Roy, Adv.

...for the respondent nos. 1 & 2

The Court: This is an application for substitution of the Arbitrator under Section 14 of the 1996 Act.

The admitted facts placed before the Court show that the petitioner invoked the arbitration clause by way of a notice dated 20th April, 2022, pursuant to which the first sitting was held on 11th June, 2022. The respondents however took an objection under Section 12(5) of the 1996 Act that is on the point of neutrality of the Arbitrator and the learned Arbitrator recused on 6th July, 2023. The recusal was done by way of a formal letter.

The petitioner is hence before the Court for a fresh appointment.

Learned counsel appearing for the respondents seeks to oppose the application firstly on the superfluous ground that the agreement is of 2028 and secondly, on the ground that the agreement may not be properly stamped.

The Court is not willing to consider either of these grounds since the respondents admittedly were already before the learned Arbitrator and had also participated in at least two sittings held in April and July, 2023. The only objection then was made under Section 12(5) of the Act.

It is evident that the learned Arbitrator has become *de jure* and *de facto* unable to perform his duties under Section 14(1)(a) of the Act by reason of the ground for recusal. Section 15(2) requires that when an Arbitrator is being substituted, the substitution shall be in accordance with the rules under which the erstwhile Arbitrator was appointed.

The Court accordingly sees no impediment in allowing the present application.

Ms. Swati Dalmia, Advocate is appointed as the Arbitrator subject to the learned Arbitrator communicating her consent in the prescribed format to the Registrar, Original Side of this Court within three weeks from date.

The petitioner's advocate-on-record shall communicate this order on the learned Arbitrator by 14th October, 2023 along with the requisite details of the contact person of the petitioner.

The supplementary affidavit is taken on record.

(MOUSHUMI BHATTACHARYA, J.)