

OCD-27

ORDER SHEET

AP/786/2023

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

BHANU FARMS LIMITED
Versus
SBI GENERAL INSURANCE COMPANY LTD.

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 20th November, 2023.

Appearance:

Mr. Sudip Deb, Adv.

Mr. Meghajit Mukherjee, Adv.

Mr. Debdut Mukherjee, Adv.

...for the petitioner

Ms. Trisha Mukherjee, Adv.

Mr. Chetan Kumar Kabra, Adv.

...for the respondent

The Court: The petitioner seeks reconstitution of the Arbitral Tribunal for adjudicating the disputes and differences which have arisen between the parties on the ground that the mandate of the learned Arbitrator terminated on 27th February, 2023. The date is given in accordance with Section 29-A(1) of the 1996 Act with regard to 12 month from the date of completion of pleadings.

Learned counsel appearing for the petitioner submits that the petitioner is entitled to have the Arbitrator substituted both under Sections 14 and 15 of

The Arbitration and Conciliation Act, 1996 as well as under Section 29-A(6) after termination of the mandate.

The advocate-on-record of the respondent places a letter dated 29th March, 2023 from the respondent which records that the respondent consented to extension of the mandate for six months from 28th February, 2023. This letter is disputed by the petitioner on the ground that the petitioner did not receive this letter.

First and foremost, it is arguable whether the respondent could have extended the mandate post-facto i.e. by way of a letter dated 29th March, 2023 which was intended to have effect from 28th February, 2023.

In any event, the mandate of the Arbitrator terminated on and from 27th February, 2023 without the consent of the respondent. Even if the respondent's consent is accepted, the mandate would have terminated on 28th August, 2023. The petitioner under any of these circumstances is entitled to substitute the Arbitrator under Sections 14 and 15 of the Act.

The petitioner relies on *Swadesh Kumar Agarwal vs. Dinesh Kumar Agarwal*, (2022) 10 SCC 235, a Co-ordinate Bench judgment in *Gammon Engineers and Contractors Pvt. Ltd. v. State of West Bengal*, 2023 SCC OnLine Cal 2326 and a judgment delivered by this Court in *Rohan Builders (India) Pvt. Ltd. v. Berger Paints India Limited*, 2023 SCC OnLine Cal 2645 to buttress his contention.

Section 14(1)(a) of the 1996 Act declares that the mandate of an Arbitrator shall terminate and the Arbitrator shall be substituted if the

Arbitrator becomes *de jure* or *de facto* unable to perform his functions. Since the Arbitrator's mandate has terminated, the petitioner is entitled to have a new Arbitrator in place and stead of the earlier learned Arbitrator.

AP/786/2023 is accordingly allowed and disposed of by appointing Mr. Sanjib Banerjee, former Chief Justice of the Madras and Meghalaya High Courts, to act as the Arbitrator subject to the learned Arbitrator communicating his 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 22nd November, 2023 along with the requisite details of the contact person of the petitioner.

The learned Arbitrator is requested to continue with the arbitration from the stage at which the arbitration was discontinued subject to the agreement of the parties.

(MOUSHUMI BHATTACHARYA, J.)