

OCD-15

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE
Commercial Division

AP-COM/1/2023

M/S E.R. ENTERPRISES
VS
J M FISCAL SERVICES PRIVATE LIMITED AND ANR

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA
Date : 11th December, 2023.

Appearance:
Mr. Aniruddha Bhattacharya, Adv.
Mr. Arnab Roy, Adv.
... for the petitioner.

Mr. Rohit Das, Adv.
Mr. Anubhav Roy, Adv.
Ms. Kiswar Rahman, Adv.
... for the respondents.

The Court: Affidavit-of-service is kept on record.

This is an application under Section 14 of the 1996 Act for termination of the mandate of the learned sole Arbitrator. Learned Counsel appearing for the parties have taken the Court through the relevant documents. It appears that the respondent invoked the arbitration clause on 14th June, 2023 nominating the learned Arbitrator. The learned Arbitrator thereafter issued notice to the parties for commencement of the arbitration which was originally fixed on 17th August, 2023 but postponed to 11th September, 2023. The petitioner did not take any objection at this point of time with regard to unilateral

appointment. The learned Arbitrator passed directions for filing of pleadings in the meantime.

Learned Counsel appearing for the petitioner (respondent in the arbitration) submits that the Court can only terminate the mandate and not appoint an Arbitrator in terms of Section 14 of the 1996 Act.

Srei Equipment Finance Limited Vs. Seirra Infraventure Private Limited. 2023 SCC OnLine Calcutta 2030 considered all the relevant decisions on this issue including *Swadesh Kumar Agarwal Vs. Dinesh Kumar Agarwal* 2022 SCC OnLine SC 556. The Court was of the view that a substitute Arbitrator can be appointed in place and stead of the erstwhile Arbitrator after termination of the mandate.

Needless to say, the issue with regard to unilateral appointment of Arbitrators has conclusively been settled by several decisions of the Supreme Court, *Perkins Eastman Architects DPC Vs. HSCC (India) Limited* reported in (2020)20 SCC 760 being the last. It is hence no longer open for one of the parties to proceed with its choice of Arbitrator.

AP(COM)/1/2023 is accordingly allowed and disposed of by directing the termination of the learned Arbitrator's mandate and appointing a substitute Arbitrator. Mr. Siddhartha Chatterjee, Counsel is appointed as the Arbitrator.

The petitioner will communicate this order to the new Arbitrator by 13th December, 2023. The appointment is subject to the learned Arbitrator communicating his/her consent in the prescribed format

within 3 weeks from the communication of this order. The petitioner will also communicate the particulars of the relevant contact person of the petitioner to the learned Arbitrator.

(MOUSHUMI BHATTACHARYA, J.)

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