

OC-16

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE
[Commercial Division]

AP-COM/617/2024

M/S ZAMIL STEEL BUILDINGS INDIA PVT LTD
VS
M/S JKS INFRASTRUCTURE PVT LTD

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date : 2nd September, 2024

Appearance:
Mr. Mrinal Beri, Adv.
...for petitioner.

Mr. Debnath Ghosh, Adv.
Mr. Soumava Mukherjee, Adv.
Mr. Biswaroop Mukherjee, Adv.
Ms. S. Sen, Adv.
...for respondent.

The Court:- Affidavit in opposition filed in Court today be kept with the records.

Learned Counsel for the petitioner submits that the mandate of the learned Arbitrator be extended for six months.

Learned Counsel for the respondent opposes the prayer and submits that the learned Arbitrator be substituted on the ground of bias as evident from the orders passed by the learned Arbitrator as well as that the Arbitrator did not have jurisdiction, since there is no valid arbitration clause in the agreement between the parties.

However, insofar as the grounds of bias and lack of jurisdiction are concerned, those were canvassed before the learned Arbitrator himself under

Section 16 of the Arbitration and Conciliation Act, 1996, but was turned down by the learned Arbitrator. A challenge by way of a revision against the said order met with a disposal with liberty to the respondent to take up such grounds in a challenge under Section 34, if preferred against the final award.

Learned Counsel for the respondent also places reliance on the order dated April 30, 2024 passed by the learned Arbitrator where due to non-payment of the remuneration and costs of the arbitration, the counter claim of the respondent was rejected.

Learned Counsel also relies on the order dated May 14, 2024, where the learned Arbitrator further directed the respondent, even after the dismissal of the counter claims, to make payments.

Be that as it may, in the event the respondent is aggrieved by the said order of the learned Arbitrator turning down the counter claim for non-payment of the Arbitrator's fees and/or consequential directions to make payments, it would only be open to the respondent to challenge the same in a properly constituted challenge under Section 34 against the final award.

Within the scheme of the Arbitration and Conciliation Act, 1996, there is no scope of any interim first-look challenge during pendency of the arbitral proceeding, unless an order comes within the specific provisions of Section 37 of the 1996 Act. Section 5 of the said Act clearly debars judicial intervention except under the specific provisions as provided in the 1996 Act itself.

That being the situation, there is no scope of this Court to enter into the merits of the said orders at this stage.

Nothing in this order shall prevent the respondent, in any event, from preferring a challenge under Section 34 against the final award, if aggrieved, on all grounds including the grounds of bias as well as no- existence of arbitration clause as well.

However, insofar as the present application is concerned, I do not find any scope of substituting the learned Arbitrator on grounds which have already been turned down under Section 16 of the 1996 Act. Accordingly, the mandate of the learned Arbitrator is extended for a period of six months from this date.

AP-COM/617/2024 is disposed of accordingly, it is expected that none of the parties shall take any unnecessary adjournment before the learned Arbitrator.

(SABYASACHI BHATTACHARYYA, J.)

SK.