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IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE
(COMMERCIAL DIVISION)

AP-COM/800/2024
LAXMI PAT SURANA
VS
FUTURE ENTERPRISES LTD AND ANR.

BEFORE:
The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA
Date: 10th September, 2024.

Appearance:
Mr. Laxmi Pat Surana,
...the petitioner in person.

Mr. Rishad Medora, Adv.
Ms. Arti Bhattacharya, Adv.
Mr. Aritra Deb, Adv.
...for the respondent no.2.

The Court: The petitioner appears in person with leave of Court subject to the petitioner filing the No Objection obtained from the erstwhile advocate representing him in the matter during the course of the day.

The petitioner contends that the pleadings were completed before the erstwhile Arbitrator on August 10, 2022. Accordingly, in terms of Section 29A(1) of the Arbitration & Conciliation Act, 1996, the mandate of the arbitral tribunal terminated automatically on August 9, 2023. However, although the petitioner denies having consented, it is fairly submitted that the respondent had taken a stand that the mandate was extended for a further period of six months. Even going by the assumption that such extension was granted, the petitioner submits that the extended mandate also terminated on or about February 8, 2024. Accordingly, after February 8, 2024, the Arbitrator lost his mandate and hence any order passed thereafter is a nullity. In the absence of any application by either party under Section 29A for extension/substitution, it is submitted that the Arbitrator has become *functus officio* and his mandate had expired *de jure*.

Learned counsel appearing for the respondent no.2 submits that insofar as the respondent no.1 is concerned, it is now undergoing a Corporate Insolvency Resolution Process, which is agreed to by the petitioner. Hence, it is submitted that the application is not maintainable insofar as the respondent no.1 is concerned.

Learned Counsel appearing on behalf of the respondent no. 2 submits that the Arbitrator, by an order dated July 30, 2024, had terminated the arbitral proceeding itself under Section 32(2)(c) of the 1996 Act. Accordingly, in view of such termination of the arbitral proceeding itself, there is no scope of an application under Section 15 of the 1996 Act being maintainable. In any event, this is not a scenario under Section 15, since Section 15 does not contemplate filing of an application and as the proceeding itself has been terminated under Section 32.

Secondly, learned Counsel for the respondent no. 2 contends that the Section 15 application has been filed more than a year after the expiry of the mandate and as such ought not to be entertained at this juncture.

Furthermore, it is argued that in terms of Section 15(2) of the 1996 Act, where the mandate of an Arbitrator terminates, a substitute Arbitrator shall be appointed according to the rules that were applicable to the appointment of the Arbitrator being replaced. Thus, the parties are required to revert back to the original rules and take appropriate steps for fresh appointment of Arbitrator. Hence, the present application, it is argued, is not maintainable in law.

Upon hearing learned counsel, the Court comes to the following conclusions:

Insofar as the delay in filing the present application is concerned, there is no bar under Section 15 or any other provision of the 1996 Act to an application under Section 15 being filed after any particular period.

In such situations, the residuary provision of the Limitation Act, that is Article 137 of the Schedule is applicable and the limitation should be construed to be 3 years from the date of the cause of action. Seen from such perspective, the application cannot be said to be time-barred.

Although Section 15 does not contemplate any application as such, there is no bar in a party pointing out to the Court by taking out an application that there has been a termination of the mandate sufficient to invoke Section 15. The present application can be treated to be an application to bring to the notice of the Court such situation.

The respondent no. 2 has seriously contended that unless the order dated July 30, 2024, terminating the proceeding under Section 32, is assailed before an appropriate forum, that too successfully, the same cannot be just ignored by the Court and an order passed within the contemplation of Section 15.

However, as discussed above, the mandate of the Arbitrator automatically expired by operation of Section 29 A (1)of the 1996 Act on August 9, 2023. Even if the best case of the respondent no. 2 is considered, the same having been extended for a further period of six months, also expired on February 8, 2024. Hence, as on July 30, 2024, when the purported order terminating the proceeding under Section 32 was passed by the learned Arbitrator, the arbitrator had been rendered *functus officio* by termination of his mandate. In other words, the Arbitrator was already *de jure* incapable of performing his functions within the contemplation of Section 14 of the 1996 Act.

Orders passed after the termination of the mandate, which mandate is the source of authority of the arbitrator, are by their very nature null and void *ab initio.* As such, no separate challenge is required to be put up to such order in order to ignore the same in law.

Hence, the Court is to proceed on the premise that the mandate of the Arbitrator had terminated, at the most on February 8, 2024, and the learned Arbitrator did not have any authority or jurisdiction to proceed with the arbitral proceeding thereafter.

The learned advocate for the respondent no. 2 has also submitted in the alternative, that if this Court is with the petitioner on the maintainability of the instant Section 15 application, the same Arbitrator be permitted to continue by extension of his mandate.

However, the said proposition cannot be accepted as well, for the simple reason that no application has been filed within the contemplation of Section 29A(5) of the 1996 Act by either of the parties till date. Sub-section (1), read with sub-section (4), of Section 29A of the 1996 Act mandates that in the absence of any application for extension of time under sub-section (5) of the said Section, the mandate of the Arbitrator terminates.

In the present case, thus, in the absence of any such application by either of the parties, the erstwhile Arbitrator's mandate has already terminated, thereby rendering the Arbitrator *de jure* unable to perform his functions within the contemplation of Section 14(1)(a) of the 1996 Act. In such view of the matter, this is a fit case where it has to be deemed that there has been a termination of the mandate of the Arbitrator under Section 14 of the 1996 Act. In the absence of any application for extension of the mandate, the present situation does not come within the ambit of Section 29A of the said Act but squarely falls within the purview of Section 15. Hence, there is no other option for the Court but to substitute the arbitrator whose mandate has already terminated.

Accordingly, AP-COM/800/2024 is allowed, thereby appointing Justice Subrata Talukdar (retired) as the sole substituted Arbitrator to carry on with the arbitral proceedings from the stage which it had reached up to February 8, 2024. The remuneration of the Arbitrator shall be fixed by the learned Arbitrator in consultation with the parties and within the framework of the 1996 Act and its Fourth Schedule.

(SABYASACHI BHATTACHARYYA, J.)

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