

ORDER SHEET
AP-COM/177/2025
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL DIVISION

DAMODAR VALLEY CORPORATION
VS
AKA LOGISTICS PRIVATE LIMITED

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 9th June, 2025.

Appearance:
Mr. Samrat Sen, Sr. Adv.
Mr. Somdutta Bhattacharyya, Adv.
Mr. Aritra Deb, Adv.
...for the petitioner

Mr. Rajarshi Datta, Adv.
Mr. Neelesh Chowdhury, Adv.
Ms. Anuradha Poddar, Adv.
...for the respondent

The Court:

1. This is an application under Section 14(2) read with Section 15 of the Arbitration and Conciliation Act, 1996 (hereinafter referred as a said Act).
2. The petitioner prays for termination of the mandate of the learned Arbitrator, on the ground that the learned Arbitrator is de jure unable to act. The petitioner further prays for appointment of a neutral substitute Arbitrator. In the interregnum, a prayer for stay of the proceeding has been made.

3. This Court has proceeded to hear the matter finally, on consent of the parties. Mr. Datta, learned Advocate for the respondent submits that the issue involved is on the interpretation of the law. He does not wish to file any affidavit-in-opposition.
4. Mr. Samrat Sen, learned senior advocate appearing on behalf of the petitioner submits that, under the said Act and as per the order of the referral court, the learned Arbitrator was required to make a disclosure in terms of Schedule VI of the said Act. The learned Arbitrator made a disclosure, inter alia, stating that he did not have any relationship either with the parties or with their lawyers, directly or indirectly. The petitioner was not satisfied with such disclosure and by a letter dated August 22, 2024, requested the learned Arbitrator to specifically disclose whether the learned Arbitrator had been engaged as a counsel or continued to be engaged as a counsel by the advocate-on-record for the claimant, namely, M/s. Choudhury & Co. Advocates. The learned Arbitrator did not reply to the same. Upon lapse of a considerable time, the learned Arbitrator directed the petitioner to file another letter of such nature, and cause service of the same upon the claimant. The letter/application dated August 22, 2024 had not been served upon the respondent. The proceedings continued. The pleadings were completed.
5. Thereafter, by another letter dated December 17, 2024, the petitioner made a further request to the learned Arbitrator, to disclose whether he had been briefed as a counsel or engaged in any other capacity by the

law firm, M/s. Choudhury & Co. It is submitted by Mr. Sen, that the learned Arbitrator refused to disclose any further information. This application has been filed seeking termination of mandate on the basis of the disqualifications mentioned under Schedule VII of the said Act.

6. Parties filed their statement of claims, statement of defence, rejoinder and sur-rejoinder. The sur-rejoinder filed by the petitioner was directed to be withdrawn with liberty to file afresh. The learned Arbitrator did not permit additional facts to be introduced in the sur-rejoinder.
7. Mr. Sen submits that the petitioner has sufficient reason to believe that the learned Arbitrator had been engaged on various occasions as counsel by the advocate-on-record for the claimant. They have a relationship. The law debars the learned Arbitrator from continuing with the proceeding as he is disqualified under the VIIth Schedule. Mr. Sen further submits that the learned Arbitrator had taken a hyper technical approach while rejecting the sur-rejoinder, inasmuch as, the facts which were introduced in the sur-rejoinder, could have been dealt with by the claimant by filing a reply to the said sur-rejoinder. An arbitral proceeding is not a formal proceeding like a suit. It is based on party autonomy. Thus, as a normal course of action, the learned Arbitrator ought to have allowed the sur-rejoinder and decided the matter relating to introduction of additional facts, at the final hearing. Mr. Sen submits that such aspect should also be looked into by this Court while taking a decision as to whether the mandate of the learned Arbitrator should be terminated under Section 14 of the said Act or not.

8. Mr. Datta submits that the order passed by the learned Arbitrator, directing the petitioner to take back the sur-rejoinder and file afresh, cannot be challenged in this proceeding. It is submitted that, the disqualifications under Schedule VII, do not come into operation in the present case. Issues were framed and evidence had commenced. The application is not maintainable at this belated stage.
9. Mr. Sen submits that although the proceedings continued, the petitioner had participated without prejudice to its right to pray for appropriate orders, as were permissible in law. The plea that the learned Arbitrator is de jure unable to perform, could be taken at any stage of the proceeding. The application is not barred under the law.
10. Having heard the learned advocates for the respective parties, this Court is of the view that the disclosure made by the learned Arbitrator to the effect that, he did not have any relationship with the parties to the arbitral proceeding or their learned lawyers either directly or indirectly, meant that the learned Arbitrator did not have either a professional or personal connection with the parties and had not appeared on their behalf in any litigation. Over and above that, the learned Arbitrator did not have any personal relationship with the learned advocate-on-record (law firm) or its in house advocates. The disclosure did not mean that the learned Arbitrator, who is an Advocate of the High Court, was never briefed by the law firm. It meant that he did not represent the law firm or its in-house advocates in any litigation as his clients.

11. Section 12(5) of the said Act provides that, notwithstanding any prior agreement to the contrary, any person whose relationship with the parties or counsel or the subject matter of the dispute falls under any of the categories specified in the VIIth schedule, shall be ineligible to be appointed as an arbitrator.

12. Mr. Sen has prayed for termination of the mandate of the learned Arbitrator on the strength of Categories 3 and 4 of the VIIth schedule.

The provisions are quoted below:-

“Arbitrator’s relationship with the parties or counsel

3. The arbitrator currently represents the lawyer or law firm acting as counsel for one of the parties.

4. The arbitrator is a lawyer in the same law firm which is representing one of the parties.”

13. Schedule VII deals with the arbitrator's relationship with parties or counsel. Category 3 of the VIIth Schedule, provides that the arbitrator shall not represent the lawyer or the law firm, acting as counsel for one of the parties. Which means that the learned Arbitrator should not have represented the law firm as its Advocate or counsel in any legal proceeding. The law firm should not be his client. Category 4 provides that the arbitrator should not be a lawyer of the same law firm which represents one of the parties. Which means, he should not be an employee or a partner, or in-house counsel of the law firm which represents any of the parties to an arbitral proceeding.

14. The contention of Mr. Sen that category 3 of the VIIth Schedule, would debar the learned Arbitrator from continuing with the proceeding, is not the correct interpretation of the provision. A law firm acts as an

advocate-on-record for the client/litigant and engages counsel/Advocates to plead in a court of law. If the interpretation given by Mr. Sen is taken to be correct, in that event the situation would become impossible. There would be hardly any Advocate left to be appointed as Arbitrators. In their legal journey, Advocates would be briefed by solicitors/law firms who may also appear for a claimant. The intention of the legislature was not to debar a learned Advocate from acting as an Arbitrator in a matter in which one of the parties was being represented by a law firm which had engaged the said learned Arbitrator in another litigation between third parties, not connected with the arbitral proceeding. Category 3 under the VIIth Schedule cannot be stretched to cover a situation where a counsel/advocate, who had been engaged by a particular law firm, could not act as an Arbitrator in a dispute arising between two independent individuals or companies, one of whom had engaged the same law firm to act as its solicitor/ Advocate-on-Record and file the application under Section 11 of the said Act.

15. The provisions do not cover a situation when a learned Arbitrator had, at any given point of time, been engaged by the law firm who was acting as the Advocate on record of one of the parties to the arbitral proceeding, as an Advocate to represent a client in an unrelated matter. The Arbitrator may have been engaged by M/s. Choudhury and Co. Advocates, either as counsel or as an Advocate in other litigations in which the parties to the present arbitral proceeding were not involved.

The engagement of the learned Arbitrator by M/s. Choudhury & Co. Advocates, was on a professional basis and to represent their clients. It is not the petitioner's case that the Arbitrator was representing or had represented M/s Choudhury & Co. Advocates or any of its in house Advocates as his client, in any particular litigation. There is also no allegation of any personal relationship with the learned Advocates.

16. At the broadest level, no Arbitrator should be involved in any manner with one of the parties to the dispute and the arbitrator should neither represent the law firm or its lawyers in any litigation or have any personal relationship with them. A law firm briefing a counsel or an advocate in unrelated matters, stands in a different footing. This is a professional engagement.
17. Advocates can accept briefs from multiple solicitors or law firms. It often happens that they are not always briefed at every stage of every litigation by the same law firm. In our system, counsel from the same chambers also oppose each other in a litigation and there is no doubt raised about their professional independence. Thus, there is no justifiable doubt as to the impartiality of the learned Arbitrator in this case as well.
18. Therefore, a counsel/Advocate, having accepted briefs from a law firm for some other client/litigant, cannot per se be said to be ineligible or disqualified to act as an arbitrator and adjudicate disputes between parties who were never represented by the learned Arbitrator in a court of law and who were not personally known him, even if the lawyer/law

firm representing a party may have briefed the learned Arbitrator, in his capacity of an Advocate in other matters.

19. Under such circumstances, the submissions of Mr. Sen are not accepted. The mandate does not terminate as the learned Arbitrator is not de jure unable to perform his duties. With regard to the rejection of the sur-rejoinder, the remedy of the petitioner is before the appropriate forum. The arbitral proceeding shall continue from the stage it was last held. The disclosure made by the learned Arbitrator was adequate and sufficient compliance of the law.

20. The application is, accordingly, disposed of.

(SHAMPA SARKAR, J.)