

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

AP-COM/226/2025
M/S. HRD BUILDERS PVT.LTD.
VS
M/S. DAMODAR VALLEY CORPORATION

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date: 9th June, 2025.

Appearance:

Mr. A. Trivedi, Adv.
Ms. Amrita Panja Moulick, Adv.
Mr. Bhavesh Garodia, Adv.
Ms. Shivangi Agarwal, Adv.
...for petitioner.

Mr. Samrat Sen, Sr. Adv.
Mr. Prasun Mukherjee, Adv.
Mr. Deepak Agarwal, Adv.
...for respondent.

1. This application was filed for extension of mandate of the learned arbitral tribunal which expired on February 9, 2025. Upon extensive hearing given to the parties, this Court finds that this application should be described as an application under Section 29A read with Sections 14 and 15 of the Arbitration and Conciliation Act, 1996. Liberty is granted to the petitioner to correct the description of the application.
2. It is brought to the notice of the Court that the learned presiding arbitrator expired and the nominee arbitrators thereafter failed to come to a consensus with regard to appointment of the presiding arbitrator. Finding no other alternative, the petitioner approached the Institute of Engineers (India) having its office at Kolkata for appointment of a

presiding arbitrator as per the terms of the agreement. Although the said application before the Institute of Engineers (India) was filed by the petitioner during the continuance of the mandate of the arbitral tribunal, the Institute of Engineers appointed the presiding arbitrator on February 17, 2025 i.e. after the mandate had expired.

3. Mr. Sen, learned senior advocate appearing for the respondent submits that the Institute of Engineers (India) did not have the jurisdiction to appoint a presiding arbitrator when the mandate of the learned tribunal had expired. Thus, the presiding arbitrator does not have any authority to act as such. This Court cannot extend the mandate of a defunct arbitral tribunal.
4. The parties agree before this Court, that the presiding arbitrator was appointed after the termination of the mandate. Although the law provides that the arbitral tribunal could continue during the pendency of an application for extension of the mandate, in my view, such provision cannot be extended to the exercise undertaken by the Institute of Engineers (India) before which the application for appointment of a presiding arbitrator, upon demise of the erstwhile presiding arbitrator, was pending. The petitioner had taken the correct recourse. Unfortunately, when the mandate had expired, the appointment of the presiding arbitrator was made. Parties thus submit before this court that, under such circumstances, this Court must appoint a presiding arbitrator upon extending the mandate of the arbitral tribunal. They agree that a

presiding arbitrator should be appointed in exercise of powers under Sub-Section (6) of Section 29A of the said Act.

5. Under such circumstances, this Court is of the view that the appointment of the presiding arbitrator by the Institute of Engineers (India) is contrary to law. This Court appoints Hon'ble Justice Aloke Chakrabarti, former Judge of this Court, as the presiding arbitrator in the matter. This appointment is subject to compliance of Section 12 of the Arbitration and Conciliation Act, 1996. The proceeding shall continue from the stage it was last held. The remuneration of the arbitral tribunal will be as per the Fourth Schedule of the Act. The mandate of the arbitral tribunal is extended for a period of one year from the date of communication of this order.
6. AP-COM/226/2025 is disposed of.

(SHAMPA SARKAR, J.)