

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

APOT/225/2025
IA No. GA/1/2025

NJA GARMENTS PRIVATE LIMITED AND ORS.
VS
L & T FINANCE LIMITED

BEFORE:

The Hon'ble JUSTICE ARINDAM MUKHERJEE

Date: 11th September, 2025

Appearance:
Ms. Kruti Bhavsar, Adv.(VC)
Mr. Jnanada Prosad Roy, Adv.
Mr. Nepesh Majhi, Adv.
. . For the appellants.
Mr. Poritosh Sinha, Adv.
Ms. Shrayashee Das, Adv.
Mr. Rohan Kr. Thakur, Adv.
. . .For the respondent.

The Court :- This is an appeal under Section 37(2)(b) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the 1996 Act') arising out of an interim order dated 13th June, 2025 passed by the learned Arbitrator in an application filed by the respondent under the provisions of Section 17 of the said Act. The order has been challenged *inter alia* amongst other on the ground that the learned Arbitrator does not have the jurisdiction to adjudicate the disputes between the parties on having been unilaterally appointed by the respondent invoking the arbitration agreement between the parties. Admittedly the parties entered into a loan

agreement described as Loan Facility Bearing Agreement No.BL230426040100381 dated 24th May, 2023 which contains a clause for Dispute Resolution being the arbitration agreement between the parties.

Mr. Raj Ratna Sen, a barrister and an advocate being a member of the Bar Library Club is appointed as the substitute Sole Arbitrator by invoking the provisions of Section 15 of the 1996 Act in his place and stead and to enter into reference afresh and adjudicate all disputes arising out of the agreement dated 14th September, 2022. The arbitration proceedings shall commence de novo and the Arbitrator shall have to comply with all other requirement under the 1996 Act. The learned Arbitrator so appointed shall be entitled to a lump sum remuneration Rs.2,000,00/- in view of the ratio laid down in **2024 (4) SCC 481 [ONGC Ltd. v. Afcons Gunanusa JV.]** The remuneration shall be shared equally by the appellants and the respondent. The Arbitrator shall be entitled to secretarial assistance which along with all other expenses in conducting the arbitration shall be borne by the parties in equal share. The venue of the Arbitration shall be at Kolkata.

Although, the appellants have challenged the jurisdiction of the Learned Arbitrator but it is an undisputed fact that the learned Arbitrator subsequent to the passing of the order impugned has withdrawn from her office and the parties have accepted the same. This gives rise to failure or impossibility to act on the part of the Arbitrator as provided under Section 14 of the 1996 Act, on an event as specified under Section 14(1)(b) having occurred. A substitute arbitrator, therefore, is required to be appointed by

invoking the jurisdiction under Sections 14 and 15 of the said Act. The challenge, though is in an appeal under Section 37(2)(b) of the 1996 Act but due to subsequent development which the Court can always take note of, I am inclined to appoint a substitute arbitrator being the Bench competent to do so under the provisions of Sections 14 and 15 as also under Section 11 of the 1996 Act due to delegation of authority by the Hon'ble the Chief Justice of this Court particularly when the subsistence of the arbitration agreement is admitted by the parties. Moreover, asking the parties after setting aside the order on the ground of jurisdiction to pursue remedy under Sections 11(6) or 14 or 15 of the 1996 Act will go against the object of the early disposal of a matter without minimum interference by Court being the spirit of the 1996 Act.

In the aforesaid facts and circumstances, the order impugned dated 13th June, 2025 is set aside on the ground that the Arbitrator who had passed the said order did not have the jurisdiction to arbitrate the disputes between the parties in view of the ratio laid down in **(2017) 8 SCC 377 (TRF Ltd. v. Energo Engg. Projects Ltd.)** and **(2020) 20 SCC 760 (Perkins Eastman Architects DPC & Anr. v. HSCC (India) Ltd.)**. The mandate of the arbitrator, namely, Ms. Tanuja Balaji is not required to be terminated as she has already withdrawn herself from the office which has been accepted by the parties.

The appeal and the connected application accordingly stand disposed of.

Urgent photostat certified copy of this judgment be supplied to the parties, if applied for, upon compliance of all requisite formalities.

(ARINDAM MUKHERJEE, J.)