

OCD-7

ORDER SHEET

AP-COM/836/2024

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

M/S. HAROGOURI RICE MILL
VS
STATE OF WEST BENGAL AND ANR.

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date: 25th February, 2025.

Appearance:

Mr. Shreyaan Bhattacharya, Adv.

Mr. Sayantan Bose, Adv.

Ms. Manisha Das, Adv.

Ms. Neha Mishra, Adv.

...for the petitioner.

Mr. Sirsanya Bandopadhyay, Sr. Standing Counsel

Mr. Paritosh Sinha, Adv.

Mr. Arindam Mandal, Adv.

Mr. Aishik Chakraborty, Adv.

...for the State.

1. This is an application for appointment of a learned Arbitrator on the strength of Clause H of the agreement dated November 16, 2017, which was entered into between the parties. The agreement was in connection with the work relating to converting paddy to rice. Admittedly, the last supply was made by the petitioner on September 2018 and a bill was, accordingly, raised. The petitioner contends that the said bill remained unpaid. According to the petitioner, the total aggregate amount payable under various heads was Rs.2,33,79,747/-.

2. The petitioner filed a writ petition which was registered as WPA No.15992 of 2021. In the said writ petition, the petitioner made claims under three heads for Rs.27,78,950/-, Rs.11,09,749/- and Rs.65,98,616/-. The writ jurisdiction was invoked against the respondent which is State under Article 12 of the Constitution of India. The respondent filed an opposition to the said writ petition and denied the claim of Rs.65,98,616/-, but admitted the claims for Rs.27,95,425/- and Rs.11,09,742/-. The admission of liability to pay Rs.11,09,742/- was subject to the petitioner submitting proper bills. The writ petition was disposed of by a learned Single Judge by directing the appropriate department to ensure that the amount of Rs.27,95,425/- was released to the respondent herein, for onward disbursement to the petitioner. With regard to Rs.11,09,742/- the learned Court directed payment in favour of the petitioner upon the petitioner being given an opportunity to submit the bills. It is an admitted position that, as on date those amounts have been disbursed.

3. Mr. Shreyaan Bhattacharya, learned Advocate appearing for the petitioner submits that the bills were raised in the year 2018. The jurisdiction of the learned Writ Court was invoked within the period of limitation i.e. in the year 2021. By the order of the Hon'ble Apex Court, the period of limitation was extended upto February 28, 2022, during the covid pandemic. Thus, advantage of the said decision of the Hon'ble Apex Court would be available to the petitioner. The period of limitation stood extended upto September, 2023. It is the specific case of the petitioner that within the period of limitation, the writ petition was filed and the writ court was also in seisin of the matter. Upon disposal of the writ petition, the learned Judge granted liberty to the petitioner to approach the

appropriate forum or the learned Arbitrator for adjudication of the remaining claims. Section 14 of the Limitation Act, 1963 would be applicable as the petitioner was before the wrong forum. The writ court had granted liberty to the petitioner to invoke the arbitration clause.

4. Mr. Sirsanya Bandopadhyay, learned Senior Standing Counsel submits that the claim is barred by limitation. Even if the order of the Hon'ble Apex Court is made applicable, the notice invoking arbitration was beyond a period of one year from the date when the right to sue accrued. According to Mr. Bandopadhyay, the petitioner chose to approach the Writ Court for redressal of its grievances. The petitioner prayed for a writ of mandamus for enforcement of its constitutional rights. When the petitioner consciously chose to approach the Writ Court on the self-same claim, Section 14 of the Limitation Act will not be applicable. Section 14 is applicable when a party, under a mis-conception of law or erroneous understanding of law proceeds before a wrong forum. The order of the learned Judge does not indicate that the petitioner was granted liberty to approach the Arbitrator as His Lordship found that the petitioner was before a wrong forum. Only part of the claim of the petitioner was directed to be paid by the said Court, but the claim of the remaining sum was not adjudicated upon. It is next submitted by Mr. Bandopadhyay that, in the matter of ***SBI General Insurance Co. Ltd. Vs. Krish Spinning*** reported in ***2024 SCC OnLine SC 1754***, the Hon'ble Apex Court did not hold that apart from the existence of an arbitration agreement, nothing else could be looked into by the referral court. The Hon'ble Bench rather clarified the decision in ***M/s. Arif Azim Co. Ltd. Vs. M/s. Aptech Ltd.*** reported in ***2024 INSC 155***, to hold that when intricate

questions with regard to limitation, which required elaborate evidence were involved, the referral court should not venture into the examination of the issue of limitation.

5. The facts are not in dispute. The existence of the arbitration clause is not in dispute. It is also not in dispute that, within the period of limitation the petitioner approached the Writ Court. In the writ petition, an affidavit-in-opposition was filed by the respondent, admitting part of the claims. The petitioner was granted liberty to approach the appropriate forum, by the writ court. Thus, whether Section 18 of the Limitation Act will be applicable in the facts and circumstances stated hereinabove, is to be adjudicated upon by the learned Arbitrator. In my prima facie view, denial of the claim of the petitioner by the respondent is available from the affidavit-in-opposition filed in the proceeding before the writ court. The respondents admitted the claims for Rs.27,95,425/- and Rs.11,09,742/- but denied the claim for Rs.65,98,616/-. The denial for the first time came during the pendency of the writ petition. Accordingly, the learned Judge granted liberty to the petitioner to approach the learned Arbitrator. Upon prima facie examining the sequence of events and the order of the Writ Court, this court cannot hold that the claim is ex facie time barred or deadwood. The issue shall be raised before the learned Arbitrator and shall be decided by the learned Arbitrator.

6. Accordingly, the application is disposed of by appointing Mr. Jishnu Saha, learned Senior Advocate to arbitrate upon the disputes between the parties. This order is subject to compliance of Section 12 of the Arbitration and Conciliation Act, 1996.

7. The learned Arbitrator shall fix his remuneration in terms of the Schedule of the Act.

8. All issues and objections raised by the respondents shall be decided by the learned Arbitrator.

9. The observations made hereinabove are tentative and only for the purpose of disposal of this application.

10. AP-COM/836/2024 is, accordingly, disposed of.

(SHAMPA SARKAR, J.)